

LITTER AMENDMENT BILL 2011

EXPLANATORY MEMORANDUM

Overview of the Bill

The purpose of this Bill is to protect the Western Australian environment from littering by ensuring that the legislation can effectively discourage and prosecute this activity.

The *Litter Act 1979* provides for the abatement of litter and includes a variety of offences and penalties to achieve this. However, as the legislation was developed over 30 years ago, the penalty and enforcement provisions have become outdated and no longer provide an adequate deterrent.

The maximum penalties for littering are also generally lower than those in other States and Territories, while the incidence of littering in Western Australia has shown a steady increase.

The Bill addresses this situation by making amendments to the Litter Act to substantially increase fines and improve enforcement powers.

For the primary littering offences, increased maximum penalties of \$5,000 for individuals and \$10,000 for corporations will provide a significant deterrent. The maximum penalty that the Litter Regulations 1981 may prescribe is also increased to \$5,000. This will enable amendments to the Litter Regulations to set higher infringement penalties for types of littering that pose a risk to the public.

The Bill improves the ability of authorised officers to take enforcement action regarding littering offences committed from vehicles. Amendments provide that where the driver of a vehicle involved in an offence cannot be identified, the registered owner of the vehicle is deemed responsible unless they can verify that some other person committed the offence.

The Bill will also allow the Chief Executive Officer, rather than the Minister, to appoint authorised officers for the purposes of the *Litter Act 1979*, bringing this power into line with other legislation.

CLAUSE NOTES

Clause 1. Short Title

Clause 1 cites the short title of the Act.

Clause 2. Commencement

Clause 2 provides that this Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent; and
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Clause 3. Act amended

The Bill amends the *Litter Act 1979*.

Clause 4. Section 23 amended

This clause amends section 23 so that the penalty for depositing litter, or causing litter to be deposited, on any land or on or into any waters, is increased to \$5,000 for an individual and \$10,000 for a body corporate.

Clause 5. Section 24 amended

This clause amends section 24 so that the penalty for breaking any glass, metal or earthenware, or causing any glass, metal or earthenware to be broken, on any land or into any waters, is increased to \$5,000 for an individual and \$10,000 for a body corporate.

Clause 6. Section 24A amended

Clause 6 amends section 24A(1) so that the penalty for leaving or posting a bill on any building, fence, furniture, pillar, post, screen, tree, structure, wall, or other object on or adjacent to a public place or vacant land, is increased to \$5,000 for an individual and \$10,000 for a body corporate. Section 24A(2) is also amended so that the penalty for leaving or posting a bill on or in any unoccupied vehicle in a public place is increased to \$5,000 for an individual and \$10,000 for a body corporate.

Clause 7. Section 24B amended

This clause amends section 24B(1) to specify that the penalty is “a fine of” \$10,000. This wording reflects current drafting practice at the Parliamentary Counsel’s Office in relation to the way that penalties are expressed.

Clause 8. Section 25 amended

This clause amends section 25(9) to specify that the penalty is “a fine of” \$1,000 together with a daily penalty. This wording reflects current drafting practice at the Parliamentary Counsel’s Office in relation to the way that penalties are expressed.

Clause 9. Section 26 amended

Clause 9 amends section 26(2) so that the power to appoint authorised officers for the purposes of this Act is conferred on the CEO as defined in the *Environmental Protection Act 1986* section 3(1), rather than the Minister. The amendment makes this power consistent with equivalent provisions under legislation such as the *Environmental Protection Act 1986*, the *Conservation and Land Management Act 1984* and the *Waste Avoidance and Resource Recovery Act 2007*.

Clause 10. Section 27 amended

This clause amends sections 27(1a) and (3) to specify that the penalty for each is “a fine of” \$1,000. This wording reflects current drafting practice at the Parliamentary Counsel’s Office in relation to the way that penalties are expressed.

Clause 11. Section 27A amended

Clause 11 amends section 27A so that when a littering offence is committed from a vehicle, and the authorised officer investigating the offence cannot establish who was the driver or person in charge of the vehicle at the relevant time, the person responsible for the vehicle (generally the owner) is taken to have committed the offence and may be proceeded against accordingly.

This deeming provision will assist authorised officers to enforce littering penalties against offences committed from vehicles in situations where they otherwise could not proceed due to being unable to identify the driver or person in charge of the vehicle.

Subsection 2 is then amended so that a vehicle owner who is prosecuted or given an infringement notice for an offence under section 27A may, within 14 days of being served with the relevant notice, give a written statement to verify that some other person committed the offence or was in charge of the vehicle at the time.

The name and address of that other person must also be given if it can be known to the deemed offender by reasonable diligence. If this information is provided in accordance with the requirements of this section, the deemed offender will no longer be taken to have committed the offence.

Additional subsections 5A and 5B are inserted so that a person named in a statement under subsection 2, who is prosecuted or served with an infringement notice must also be provided a copy of that statement. This requirement is in accordance with the *Criminal Procedure Act 2004*.

Clause 12. Section 30 amended

This clause amends section 30(1) so that an authorised officer may issue an infringement notice if he has reason to believe that a person has committed a prescribed offence, or if a person is deemed to have committed a prescribed offence under section 27(1). This provision clarifies that infringement notices may be issued to deemed offenders, following the amendments made to section 27A.

Clause 13. Section 33 amended

This clause amends subsection 33(2)(h) to increase the penalty that the regulations may prescribe for an offence under section 30 to \$2,000, and to provide that if different penalties are prescribed according to the circumstances by which the offence is attended, no penalty may exceed \$2,000.

Subsection 33(3) is also amended to increase the maximum penalty which the regulations may prescribe for an offence under the regulations to \$5,000.