

South Australia

Local Nuisance and Litter Control Bill 2015

A BILL FOR

An Act to regulate local nuisance and littering; to make amendments to the *Local Government Act 1999*, the *Motor Vehicles Act 1959* and the *Summary Offences Act 1953* and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Local Nuisance and Litter Control Act 2015*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

amenity value of an area includes any quality or condition of the area that conduces to its enjoyment;

authorised officer means a person appointed to be an authorised officer under section 14;

council means a council within the meaning of the *Local Government Act 1999*;

environment protection policy has the same meaning as in the *Environment Protection Act 1993*;

LGA means the Local Government Association of South Australia;

litter—see section 23;

litter abatement notice—see section 33;

local nuisance—see section 18;

nuisance abatement notice—see section 33;

operator—

- (a) in relation to a vessel, has the same meaning as in the *Harbors and Navigation Act 1993*;

- (b) in relation to a vehicle within the meaning of the *Road Traffic Act 1961*, has the same meaning as in the *Road Traffic Act 1961*;

owner—

- (a) in relation to a vessel, has the same meaning as in the *Harbors and Navigation Act 1993*, and includes the operator of the vessel;
- (b) in relation to a vehicle within the meaning of the *Road Traffic Act 1961*, has the same meaning as in the *Road Traffic Act 1961*, and includes the operator of the vehicle;

premises means—

- (a) any land, building (including residential premises) or place (including a public place, or a movable building or structure); or
- (b) a part of premises;

prescribed activity of environmental significance has the same meaning as in the *Environment Protection Act 1993*;

public place has the same meaning as in the *Road Traffic Act 1961*;

relevant council, in relation to an alleged contravention of, or commission of an offence under, this Act, means the council for the area in which the contravention or offence allegedly occurred;

road has the same meaning as in the *Road Traffic Act 1961*;

road-related area has the same meaning as in the *Road Traffic Act 1961*;

vehicle includes a vessel;

vessel has the same meaning as in the *Harbors and Navigation Act 1993*.

Part 2—Objects and application of Act

4—Objects of Act

- (1) The objects of the Act are—
- (a) to protect individuals and communities from local nuisance; and
 - (b) to prevent littering; and
 - (c) to improve the amenity value of local areas; and
 - (d) to promote the creation and maintenance of a clean and healthy environment.
- (2) The Minister, councils and other persons or bodies involved in the administration of this Act must have regard to, and seek to further, the objects of this Act.

5—Interaction with other Acts

- (1) Except as specifically provided by this Act, the provisions of this Act are in addition to, and do not limit, the provisions of any other law of the State.

- 5 (2) Without limiting the generality of subsection (1), this Act is not intended to be construed so as to prevent any person from being prosecuted under any other enactment for an offence that is also punishable by this Act, or from being liable under any other law of the State to any penalty or punishment that is higher than a penalty or punishment provided by this Act.
- (3) Nothing in this Act affects or limits a right or remedy that exists apart from this Act and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.
- 10 (4) This Act does not apply in relation to—
- (a) an activity authorised by an environmental authorisation within the meaning of the *Environment Protection Act 1993* except to the extent that the activity involves the travelling of a vehicle by road in the course of—
- 15 (i) a waste transport business (category A); or
- (ii) a waste transport business (category B); or
- (iii) dredging or earthworks drainage; or
- (b) noise generated on licensed premises within the meaning of the *Liquor Licensing Act 1997* if the relevant licence includes a condition to prevent noise emanating from the premises.

6—Territorial and extra-territorial application of Act

- 20 (1) If—
- (a) a person causes local nuisance within the State by conduct engaged in outside the State; and
- (b) the conduct would, if engaged in within the State, constitute a contravention of this Act,
- 25 the person is liable to a penalty in respect of the contravention as if the conduct were engaged in by the person within the State.
- (2) For the purposes of this section, a reference to engaging in conduct includes a reference to a failure to act.

Part 3—Administration

30 Division 1—Councils

7—Functions of councils

- (1) Subject to this Act, a council is the principal authority for dealing with local nuisance and littering in its area.
- 35 (2) In connection with subsection (1), the following functions are conferred on a council by this Act:
- (a) to take action to detect, prevent and manage local nuisance and littering within its area;
- (b) to cooperate with any other person or body involved in the administration of this Act;

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Part 3—Administration

Division 1—Councils

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- (c) to assess activities and development, or proposed activities or development, within its area in order to determine and respond to their potential for causing local nuisance and littering;
- 5 (d) to provide, or support the provision of, educational information within its area to help detect, prevent and manage local nuisance and littering;
- (e) such other functions as are assigned to the council by this Act.
- (3) A council must, in performing its functions under this Act, have regard to—
- (a) the guidelines adopted or prescribed by regulation for managing unreasonable complainant conduct; and
- 10 (b) any other guidelines adopted or prescribed by regulation to assist councils in performing their functions.

8—Cooperation between councils

- (1) A council may, in performing functions or exercising powers under this Act, act in conjunction or partnership with, or cooperate or coordinate its activities with, 1 or more other councils.
- 15 (2) The Minister may request a council to cooperate with 1 or more other councils if the Minister considers that the councils share a common area of concern.
- (3) If a council receives a request under subsection (2), the council must, within 28 days after receiving the request or such longer period as the Minister may specify, furnish the Minister with a written report on the action that the council intends to take in response to the request.
- 20

9—Council failing to perform function under Act

- (1) If, in the opinion of the Minister, a council has failed, in whole or in part, to perform a function conferred on the council under this Act, the Minister may take such action as the Minister considers necessary to perform the function.
- 25 (2) Before taking action under subsection (1)—
- (a) the Minister must, by notice in writing—
- (i) inform the council of the Minister's proposed course of action (setting out the grounds on which the action is proposed); and
- 30 (ii) invite the council to make written submissions to the Minister in relation to the matter within a period specified by the Minister; and
- (b) if the council so requests in its written submissions to the Minister—the Minister must discuss the matter with a delegation representing the council.
- (3) The Minister must, in acting under this section, have due regard to the role and responsibilities of the council to its community in other respects.
- 35 (4) The Minister may recover as a debt from the council any costs and expenses reasonably incurred by the Minister in the exercise of powers under this section.

10—Annual reports by councils

5 A council must, in its annual report prepared pursuant to section 131 of the *Local Government Act 1999* in relation to a particular financial year, include details of the performance by the council during that year of functions conferred on it under this Act.

Division 2—Administering bodies**11—Administering bodies**

- 10 (1) The Governor may make regulations declaring a body to be an administering body for the purposes of the administration or enforcement of this Act either generally or in specified locations or subject to specified conditions.
- (2) The regulations may—
- 15 (a) provide that this Act or specified provisions of this Act will apply in relation to an administering body as if it were a council, subject to such modifications or requirements as may be prescribed by regulation; and
- (b) provide for the payment to an administering body of fines or penalties for offences in respect of which the administering body has the function of enforcing.
- 20 (3) The conferral of a function on an administering body by virtue of subsection (2) is not, unless the contrary intention is specified in the regulations, to be taken to limit or affect the performance of that function by the Minister or a council.

12—Delegation

- (1) An administering body, may, by instrument executed by the administering body, delegate a function conferred on the administering body under this Division to—
- 25 (a) a committee of the administering body; or
- (b) an employee of the administering body; or
- (c) the employee of the administering body for the time being occupying a particular office or position.
- (2) A delegation under this section may be given subject to conditions specified in the instrument of delegation.
- 30 (3) A delegation under this section is revocable at will and does not prevent the administering body from acting in any matter.

13—Periodic reports by administering bodies

- 35 (1) An administering body must report to the Minister, at such intervals as the Minister requires, on the performance by the body of functions conferred on the body under this Division.
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause copies of the report to be laid before both Houses of Parliament.

Division 3—Authorised officers

14—Authorised officers

- 5
- (1) All police officers are authorised officers for the purposes of this Act.
 - (2) The Minister may appoint persons to be authorised officers for the purposes of this Act.
 - (3) A council may appoint as authorised officers specified officers or employees of the council, or officers or employees of the council of a specified class.
 - (4) An appointment—
 - 10 (a) may be made subject to conditions specified in the instrument of appointment; and
 - (b) is, in the case of an appointment by a council or other appointment of a prescribed class, subject to conditions prescribed by regulation.
 - (5) A person may hold an appointment as authorised officer from more than 1 council.
 - 15 (6) The Minister or a council may, at any time, revoke an appointment made by the Minister or council, or vary or revoke a condition specified in the instrument of such an appointment or impose a further such condition.

15—Identity cards

- 20
- (1) An authorised officer appointed under this Act must be issued with an identity card in a form approved by the Minister—
 - 25 (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act; and
 - (c) setting out the name or office of the issuing authority.
 - (2) The identity card must be issued as soon as is reasonably practicable after the appointment is made (but an authorised officer is not prevented from exercising powers under this Act just because an identity card is yet to be issued).
 - (3) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act, produce for the inspection of the person his or her identity card (unless the identity card is yet to be issued).

16—Powers of authorised officers

- 30
- (1) An authorised officer may, for any purpose connected with the administration or enforcement of this Act or with the performance, exercise or discharge of a function, power or duty under this Act—
 - 35 (a) at any reasonable time, enter or inspect any premises or vehicle; and
 - (b) during the course of the inspection of any premises or vehicle—
 - (i) ask questions of any person found in the premises or vehicle; and
 - (ii) inspect any substance, material or thing found in the premises or vehicle; and

-
- (iii) take and remove samples of any substance, material or thing found in the premises or vehicle; and
- (iv) require any person to produce any plans, specifications, books, papers or documents; and
- 5 (v) examine, copy and take extracts from any plans, specifications, books, papers or documents; and
- (vi) take photographs, films or video recordings; and
- (vii) take measurements, make notes and carry out tests; and
- 10 (viii) remove any substance, material or thing that has or may have been used in, or may constitute evidence of, a contravention of this Act; and
- (c) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act, to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
- 15 (d) require any person to answer any question that may be relevant to the administration or enforcement of this Act; and
- (e) give directions as to the stopping or movement of a vehicle; and
- (f) give any other directions reasonably required in connection with the exercise of a power conferred by any of the paragraphs above or otherwise in connection with the administration or enforcement of this Act.
- 20
- (2) In the exercise of powers under this Act, an authorised officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.
- (3) An authorised officer may only use reasonable force to enter any premises or vehicle on the authority of a warrant issued by a magistrate.
- 25
- (4) A magistrate must not issue a warrant under subsection (3) unless satisfied—
- (a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed; or
- (b) that the warrant is reasonably required in the circumstances.
- 30
- (5) If an authorised officer is inspecting premises or a vehicle under this section, the person in charge of the premises or vehicle must provide such assistance as the authorised officer reasonably requires to facilitate the inspection.
- (6) A person who—
- 35 (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of a power under this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer, in the exercise of a power under this Act; or
- 40 (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Act; or

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Part 3—Administration

Division 3—Authorised officers

- (d) having been asked a question under this section, does not answer the question to the best of his or her knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer or other person with powers under this Act,

5 is guilty of an offence.

Maximum penalty: \$10 000.

- (7) It is not an excuse for a person to refuse or fail to furnish information under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

- 10 (8) However, if compliance with a requirement to furnish information might tend to incriminate a person or make a person liable to a penalty, then—

- (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of, the document or the information (as distinct from the contents of the documents or the information); or

(b) in any other case—any answer given in compliance with the requirement, is not admissible in evidence against the person for an offence or for the imposition of a penalty (other than proceedings in respect of the provision of information that is false or misleading).

- 20 (9) An authorised officer, or a person assisting an authorised officer, who—

- (a) addresses offensive language to any other person; or
- (b) without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

25 Maximum penalty: \$10 000.

17—Limit of area of authorised officers appointed by councils

An authorised officer appointed by a council may (subject to any conditions of the appointment of the officer) only exercise powers under this Act—

- (a) within the area of the council; and
- 30 (b) within the area of any other council to the extent agreed to, in writing, by the other council; and
- (c) in addition, in the case of an alleged local nuisance—outside the area of the council (including within the area of another council and outside the State) if the source of an alleged local nuisance is within the area of the council.

Part 4—Offences

Division 1—Local nuisance

18—Meaning of local nuisance

(1) For the purposes of this Act, a local nuisance is—

(a) any adverse effect on an amenity value of an area that—

(i) is caused by—

(A) light, noise, odour, heat, smoke, fumes, aerosols or dust; or

(B) animals, whether dead or alive; or

(C) any other agent or class of agent prescribed by regulation;
and

(ii) unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area; or

(b) insanitary conditions on premises that unreasonably interfere with or are likely to interfere unreasonably with the enjoyment of premises occupied by persons in the vicinity; or

(c) unsightly conditions, of a kind prescribed by regulation, on premises caused by human activity or a failure to act; or

(d) a contravention of, or failure to comply with—

(i) a provision of an environment protection policy prescribed by regulation; or

(ii) a provision of any other Act or law prescribed by regulation; or

(e) anything declared by regulation to constitute a local nuisance,

but does not include anything declared by regulation not to constitute a local nuisance.

(2) For the purposes of subsection (1)(b), conditions on premises will be taken to be insanitary if an authorised officer reasonably believes that—

(a) the premises are so filthy or neglected that there is a risk of infestation by rodents or other pests; or

(b) offensive material or odours are emitted from the premises.

(3) In this section—

animals includes insects.

19—Causing local nuisance

(1) A person who carries on an activity intentionally or recklessly and with the knowledge that local nuisance will result is guilty of an offence.

Maximum penalty:

(a) in the case of a body corporate—\$60 000;

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Part 4—Offences

Division 1—Local nuisance

(b) in the case of a natural person—\$30 000.

- (2) A person who carries on an activity that results in local nuisance is guilty of an offence.

Maximum penalty:

(a) in the case of a body corporate—\$20 000;

(b) in the case of a natural person—\$10 000.

Expiation fee: \$500.

- (3) For the purposes of this section, the occupier or person in charge of a place at or from which an activity is carried on that results in local nuisance will be taken to have carried on the activity (but without affecting the liability of any other person in respect of the activity).

Note—

If an activity resulting in local nuisance is carried on, in, at or from a vehicle, or in connection with the use of a vehicle, rather than a place, the owner of the vehicle is, under section 29, taken to have committed an offence.

20—Person must cease local nuisance if asked

A person must, on request by an authorised officer, cease an activity, or remove from premises owned or occupied by the person any substance, material or thing that, in the opinion of the authorised officer, is causing local nuisance.

Maximum penalty: \$1 250.

Expiation fee: \$160.

21—Exemptions

- (1) A council may grant a person an exemption from the application of section 19 in respect of a specified activity.
- (2) An application for an exemption under this section must be made to the council in the prescribed manner and form and must be accompanied by the application fee fixed by regulation.
- (3) The council must not grant an exemption under this section unless—
- (a) the council has caused public notice to be published in a newspaper circulating within its area—
- (i) informing the following persons of the proposed exemption:
- (A) owners and occupiers of premises in the area;
- (B) any councils likely to be affected by the exemption; and
- (ii) inviting interested persons to make written submissions to the council on the proposed exemption within the specified period (being not less than 6 weeks); and
- (b) the views expressed in the written submissions have been considered by the council.
- (4) An exemption under this section—
- (a) must be by notice in writing; and

-
- (b) must identify (by reference to maps or written descriptions, or both) the area or areas to which the exemption relates; and
- (c) must specify any zones that are delineated in the relevant Development Plan for the area or areas; and
- 5 (d) must specify the conditions to which the exemption is subject—
- (i) which may include conditions relating to the manner of carrying on a relevant activity (including, but not limited to, time restrictions for carrying on the activity), monitoring and enforcement of conditions and reporting; and
- 10 (ii) which may be imposed according to the nature of the area or zone specified in the notice.
- (5) The council must, in determining—
- (a) an application for an exemption under this section; or
- (b) what should be the conditions of such an exemption,
- 15 take into account any relevant environment protection policy and any other matters it considers relevant.
- (6) The council may, by further notice in writing, vary or revoke an exemption under this section.
- (7) An exemption under this section has effect from the date specified in the exemption and remains in force according to its terms for a period specified in the exemption or until revoked by the council.
- 20

22—Regulations for purposes of Division

Regulations may be made for the purposes of this Division and may, without limitation—

- 25 (a) prohibit, restrict or regulate an activity, or the use or sale of a substance, material or thing, or the use or installation of equipment or infrastructure relevant to the prevention or management of local nuisance; and
- (b) prohibit, restrict or regulate the manufacture, possession, transport, storage, use or disposal of a substance, material, equipment or thing that causes local nuisance; and
- 30 (c) provide for the removal or destruction of a substance, material, equipment or thing that causes local nuisance; and
- (d) provide for compliance standards, and testing or monitoring standards, procedures or techniques (including sensory techniques), to be applied or used by authorised officers in detecting or identifying local nuisance; and
- 35 (e) provide for the taking, analysis or testing of samples relevant to detecting, identifying or monitoring local nuisance including—
- (i) the persons who may take, analyse or test those samples; and
- (ii) the places where those samples may be analysed or tested; and
- 40 (iii) the reporting of the results of the analysis or testing of those samples.

Division 2—Littering**23—Disposing of litter**

- (1) A person must not dispose of litter onto any land or into any waters.

Maximum penalty:

- 5 (a) for an offence involving the disposal of any amount of class A hazardous litter—
- (i) in the case of a body corporate—\$250 000;
 - (ii) in the case of a natural person—\$120 000 or imprisonment for 2 years;
- 10 (b) for an offence involving the disposal of 50 litres or more of class B hazardous litter or general litter—
- (i) in the case of a body corporate—\$60 000;
 - (ii) in the case of a natural person—\$30 000 or imprisonment for 6 months;
- 15 (c) for an offence involving the disposal of up to 50 litres of class B hazardous litter—\$10 000;
- (d) for an offence involving the disposal of up to 50 litres of general litter—\$5 000.

Expiation fee:

- 20 (a) for an offence involving the disposal of 50 litres or more of class B hazardous litter or general litter—\$1 000;
- (b) for an offence involving the disposal of up to 50 litres of class B hazardous litter—\$500;
- (c) for an offence involving the disposal of up to 50 litres of general litter—\$210.

- 25 (2) For the purposes of subsection (1)—

- (a) subject to paragraph (b), if litter has been left on a road, road-related area or some other public place for at least 24 hours, it will be taken to have been disposed of in contravention of subsection (1);
- 30 (b) if a vehicle is parked or left standing in a place in a manner that does not contravene a law regulating the parking or standing of vehicles on roads, it will not be taken to have been disposed of in contravention of subsection (1) unless—
- (i) an authorised officer has placed a prescribed warning notice on the vehicle; and
 - 35 (ii) at least 24 hours has expired since the placement of the notice without the owner having taken possession of the vehicle;
- (c) if litter is discarded from, blows from or otherwise falls from premises or a vehicle onto land or into waters, it is taken to have been disposed of onto the land or into the waters.

(3) Subsection (1) does not apply to the disposal of litter—

(a) in a council area—

(i) in a bin or other receptacle provided by the council for litter of that kind; or

(ii) in some other manner approved or authorised by the council; or

(b) at a depot, facility or works of a kind described in Schedule 1 Part A clause 3 of the *Environment Protection Act 1993* at which such material is received; or

(c) in accordance with an approval, consent, licence, permit, exemption or other authorisation or entitlement under any Act or law of this State or the Commonwealth; or

(d) if the Minister, relevant council or authorised officer is satisfied that the disposal was accidental and the person responsible has, as soon as becoming aware of the disposal, taken all reasonable steps to retrieve the litter.

(4) In any proceedings where it is alleged that a person contravened subsection (1), it will be a defence if it is proved that the litter was disposed of on that person's property or on some other person's property with that other person's consent.

(5) In this clause, unless the contrary intention appears—

class A hazardous litter means—

(a) a listed waste (within the meaning of the Schedule 1 of the *Environment Protection Act 1993*); or

(b) material containing such waste; or

(c) any substance, material or thing of a kind prescribed by regulation;

(d) a combination of litter referred to in a preceding paragraph of this definition and any other litter;

class B hazardous litter means—

(a) live cigarettes or cigarette butts; or

(b) syringes; or

(c) waste glass (whether or not broken); or

(d) any substance, material or thing of a kind prescribed by regulation;

(e) a combination of litter referred to in a preceding paragraph of this definition and general litter;

general litter means any solid or liquid domestic or commercial waste, and includes, without limitation—

(a) cigarette butts (other than live cigarette butts); or

(b) chewing gum; or

(c) food or food scraps or other domestic waste; or

(d) beverage containers; or

(e) used packaging; or

(f) clothing, footwear or other personal accessories or personal items; or

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Part 4—Offences

Division 2—Littering

- (g) furniture; or
- (h) garden cuttings or clippings, garden landscaping material or plant matter; or
- (i) dead or diseased animals; or
- (j) vehicles or vehicle parts; or
- 5 (k) machinery or equipment used in agriculture; or
- (l) demolition material (including, but not limited to, clay, concrete, rock, sand, soil or other inert mineralogical matter); or
- (m) building or construction material or equipment; or
- (n) any material or thing used or generated in the course of carrying on a
- 10 prescribed activity of environmental significance; or
- (o) any substance, material or thing of a kind prescribed by regulation,
- but does not include hazardous litter;

hazardous litter means class A hazardous litter or class B hazardous litter;

litter means general litter and hazardous litter;

15 ***surface waters*** means—

- (a) marine waters within the meaning of the *Environment Protection Act 1993*;
and
- (b) naturally occurring inland waters; and
- (c) artificially created bodies of water or streams that are for public use or
- 20 enjoyment;

waste has the same meaning as in the *Environment Protection Act 1993*;

waters means surface waters or underground waters.

24—Bill posting

- 25 (1) A person must not post a bill on property without the consent of the owner or occupier of the property.

Maximum penalty: \$10 000.

Expiation fee: \$315.

- (2) If a bill is posted on property in contravention of subsection (1), a person who distributed or authorised the distribution of the bill for posting is guilty of an offence.

30 Maximum penalty:

- (a) in the case of a body corporate—\$20 000;
- (b) in the case of a natural person—\$10 000.

- (3) In any proceedings where it is alleged that a person contravened subsection (2), it will be a defence if it is proved that the person did not foresee and could not reasonably be
- 35 expected to have foreseen the likelihood that such bills would be posted without consent.

- (4) If a person is convicted of an offence against subsection (1) or (2), the court may order the offender to pay to the owner or occupier of the relevant property such compensation for loss or damage caused by the commission of the offence as the court considers just.

5 **25—Litterer must remove litter if asked**

A person must, on request by an authorised officer, remove a bill posted on property, or any other litter deposited, by that person in contravention of this Division and dispose of it as directed by the authorised officer.

Maximum penalty: \$1 250.

10 Expiation fee: \$210.

26—Citizen's notification

- (1) A person who reasonably suspects another person of having committed an offence against this Division may notify the Minister or the relevant council of that suspicion by forwarding a report (a *citizen's notification*) to the Minister or the council in the form (which may include electronic form), and containing the details (which may include images), prescribed by regulation.
- 15
- (2) In any proceedings, a citizen's notification constitutes evidence of the matters set out in that notification.

Division 3—Seizure of goods

20 **27—Seizure of abandoned vehicles**

- (1) If a vehicle has, by virtue of section 23(2)(b), been disposed of in contravention of section 23, the vehicle will be taken to have been abandoned and an authorised officer may have the vehicle removed to an appropriate place.
- (2) The relevant council must ensure that the owner of the vehicle is notified of the removal of the vehicle and of the place to which the vehicle was removed—
- 25
- (a) by written notice in the prescribed form—
- (i) served on the owner personally; or
- (ii) served on the owner by the use of person-to-person registered post, as soon as practicable after the removal of the vehicle; or
- 30
- (b) if the owner is unknown or cannot be found—by public notice published in a newspaper circulating generally in the State within 14 days after the removal of the vehicle.
- (3) If the owner of the vehicle does not, within 1 month after service or publication of the notice relating to the removal of the vehicle—
- 35
- (a) take possession of the vehicle; and
- (b) pay all expenses in connection with the removal, custody and maintenance of the vehicle and of serving, posting or publishing the notice,
- the relevant council must, subject to subsection (4)(b), offer the vehicle for sale by public auction or public tender.

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Part 4—Offences

Division 3—Seizure of goods

- (4) If—
- (a) the vehicle is offered for sale but is not sold; or
 - (b) the council reasonably believes that the proceeds of the sale of the vehicle would be unlikely to exceed the costs incurred in selling the vehicle or the costs incidental to removing or holding the vehicle, or those costs combined,

5 the council may dispose of the vehicle in such manner as the council thinks fit.

(5) The council must apply any proceeds of sale of the vehicle as follows:

 - (a) firstly, in payment of the costs of and incidental to the sale;
 - (b) secondly, in payment of the costs of and incidental to the removal, custody and maintenance of the vehicle and of the notice served, posted or published under this section;
 - (c) thirdly, in payment of the balance to the owner of the vehicle.

(6) If, after reasonable inquiry following sale of the vehicle, the owner of the vehicle cannot be found, the balance of the proceeds of the sale is to be paid to the council.

15 (7) If after taking reasonable steps the council cannot return property found in the vehicle—

 - (a) the goods will be taken to be unclaimed goods for the purposes of the *Unclaimed Goods Act 1987*; and
 - (b) the council will be taken to be a bailee of the goods under that Act.

20 (8) In this section—

bicycle has the same meaning as in the *Road Traffic Act 1961*;

motor vehicle has the same meaning as in the *Road Traffic Act 1961*;

vehicle means a motor vehicle or bicycle.

28—Seizure of other goods

- 25 (1) If an authorised officer reasonably suspects that any substance, material or thing has been used in, or may constitute evidence of, a contravention of this Act (other than in circumstances referred to in section 27), the authorised officer may seize the substance, material or thing.
- (2) If, in relation to a substance, material or thing seized under subsection (1)—
- 30 (a) proceedings are not instituted for an offence in relation to the substance, material or thing within 3 months of its seizure; or
- (b) after proceedings have been instituted and completed, the defendant is not convicted,
- the person from whom it was seized is entitled to recover—
- 35 (c) the substance, material or thing or, if it has been destroyed, compensation equal to the market value of the substance, material or thing at the time of its seizure; and
- (d) compensation for any loss suffered by reason of the seizure of the substance, material or thing.

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- (3) An action for the payment of compensation under subsection (2) may be brought in any court of competent jurisdiction.
- (4) The court by which a person is convicted of an offence against this Act may order that goods to which the offence relates be forfeited to the Crown.
- 5 (5) Any goods forfeited to the Crown must be disposed of in such manner as the Minister or relevant council may direct.
- (6) If goods are sold, the proceeds of the sale must—
- (a) if the sale was directed by the Minister—be paid into the Consolidated Account; or
- 10 (b) if the sale was directed by the relevant council—be paid to that council.

Division 4—Miscellaneous

29—Liability of vehicle owners

- (1) Subject to this Part, if—
- (a) an activity is carried on—
- 15 (i) in, at or from a vehicle; or
- (ii) in connection with the use of a vehicle; and
- (b) the activity results in an offence against section 19, 23 or 24 (a *principal offence*),
- 20 the owner of the vehicle is guilty of an offence and liable to the same penalty as is prescribed for the principal offence and the expiation fee (if any) that is fixed for the principal offence applies in relation to an offence against this section.
- (2) The owner of a vehicle and the person who committed the principal offence are not both liable through the operation of this section to be convicted of an offence arising out of the same circumstances, and consequently conviction of the owner exonerates
- 25 the person who committed the principal offence and conversely conviction of the person who committed the principal offence exonerates the owner.
- (3) An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged offence against this section involving the vehicle must be accompanied by a notice inviting the owner, if he or she
- 30 was not the person who committed the alleged principal offence (the *alleged principal offender*), to provide the council or officer specified in the notice, within the period specified in the notice, with a statutory declaration—
- (a) setting out the name and address of the person who the owner believes to have been the alleged principal offender; or
- 35 (b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged principal offence and has complied with the *Motor Vehicles Act 1959* or the *Harbors and Navigation Act 1993* (as the case may require) in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).

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Part 4—Offences

Division 4—Miscellaneous

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- (4) If the vehicle is owned by 2 or more persons—
- (a) a prosecution for an offence against this section may be brought against 1 of the owners or against some or all of the owners jointly as co-defendants; and
 - (b) if the case for the prosecution is proved and a defence is not established, the defendant or each of the defendants who does not establish a defence is liable to be found guilty of an offence against this section.
- (5) Before proceedings are commenced against the owner of a vehicle for an offence against this section, the complainant must send the owner a notice—
- (a) setting out particulars of the alleged principal offence; and
 - (b) inviting the owner, if he or she was not the alleged principal offender or the owner of the vehicle at the time of the alleged principal offence, to provide the complainant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subsection (3)(a) and (b).
- (6) Subsection (5) does not apply to—
- (a) proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or
 - (b) proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the alleged principal offender.
- (7) Subject to subsection (8), in proceedings against the owner of a vehicle for an offence against this section, it is a defence to prove—
- (a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of commission of the alleged principal offence; or
 - (b) that the owner provided the complainant with a statutory declaration in accordance with an invitation under this section.
- (8) The defence in subsection (7)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.
- (9) If—
- (a) an expiation notice is given to a person named as the alleged principal offender in a statutory declaration under this section; or
 - (b) proceedings are commenced against such a person,
- the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged principal offender.
- (10) The particulars of the statutory declaration provided to the alleged principal offender must not include the address of the person who provided the statutory declaration.
- (11) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was present in or at the vehicle at the time at which the alleged principal offence was committed.

- (12) In proceedings against the owner of a vehicle or the alleged principal offender for an offence under this Part, an allegation in the complaint that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.
- 5 (13) For the purposes of subsection (1), a person will be taken to have carried on an activity in connection with the use of a vehicle that results in an offence against section 23 if the person disposed of litter in a place in contravention of that section and was seen arriving at or leaving that place in that vehicle.
- (14) This section does not apply if—
- 10 (a) the principal offence is an offence against section 23; and
- (b) the vehicle from which the litter was disposed of is—
- (i) a taxi; or
- (ii) a train, tram, bus, ferry, passenger ship, or other public transport vehicle that was being used for a public purpose at the time; and
- 15 (c) the litter was disposed of by a passenger of the vehicle.

30—Defence of due diligence

- (1) In any proceedings against a person for an offence under section 19 or 23, it is a defence to prove that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.
- 20 (2) Without limiting subsection (1), in the case of an offence committed or allegedly committed by a person in the course of undertaking a prescribed activity of environmental significance, it is not proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence unless it is proved that the person—
- 25 (a) had taken reasonable steps to prevent or avoid the circumstances that gave rise to the offence including by putting in place any systems or safeguards that might reasonably be expected to be in place; and
- (b) complied with the requirements of any notice under this Act that related to preventing or managing the circumstances that gave rise to the offence; and
- 30 (c) as soon as becoming aware of the circumstances that gave rise to the offence—
- (i) reported those circumstances to the Minister or a council; and
- (ii) took all reasonable steps necessary to prevent or reduce those circumstances.
- 35 (3) A person who would, but for the defence provided by this section, have contravened section 19 or 23 is, despite that defence, to be taken to have contravened that provision for the purposes of—
- (a) any proceedings under section 36 in respect of the contravention; and
- 40 (b) the issuing or enforcement of a nuisance abatement notice or litter abatement notice in respect of the contravention; and

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(c) the making by a court of an order under section 48 in proceedings for an offence in respect of the contravention.

(4) This section does not apply in relation to a person who is charged with an offence under section 49.

31—Alternative finding

If, in proceedings for an offence against this Part, the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against this Part that carries a lower maximum penalty (determined according to relative maximum monetary penalties), the court may find the defendant guilty of the latter offence.

32—Notification to EPA of suspected serious or material environmental harm

If the Minister or a council has reason to believe that an offence committed under section 19, 23 or 24, has or may have resulted in material environmental harm, or serious environmental harm, within the meaning of the *Environment Protection Act 1993*, the Minister or council must immediately notify the Environment Protection Authority of that belief.

Part 5—Nuisance abatement notices and litter abatement notices**33—Nuisance and litter abatement notices**

(1) The Minister or a council may issue—

- (a) a nuisance abatement notice for or in connection with securing compliance with Part 4 Division 1; or
- (b) a litter abatement notice for or in connection with securing compliance with Part 4 Division 2.

(2) A notice under this section—

- (a) must be in the form of a written notice served on the person to whom it is issued; and
- (b) must specify the person to whom it is issued (by name or by a description sufficient to identify the person); and
- (c) must specify the purpose for which it is issued; and
- (d) may direct 2 or more persons to do something specified in the notice jointly; and
- (e) may impose a requirement that the person do 1 or more of the following:
 - (i) discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice;
 - (ii) not carry on a specified activity except at specified times or subject to specified conditions;

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- (iii) take specified samples or conduct specified tests, examinations, monitoring or analyses at specified times or intervals or for a specified period or until further notice;
- 5 (iv) furnish to the Minister or council specified results or reports within a specified period;
- (v) clean up litter that the Minister or council considers to have been caused by a contravention of this Act;
- (vi) make good any damage to property that the Minister or council considers to have been caused by a contravention of this Act;
- 10 (vii) prepare, in accordance with specified requirements and to the satisfaction of the Minister or council, a plan of action for the purposes of securing compliance with any requirement of this Act or preventing any future contraventions of this Act;
- 15 (viii) take such other specified action in a specified way, and within a specified period or at specified times or in specified circumstances; and
- (f) may, in addition, in the case of a litter abatement notice, impose a requirement that the person prepare, in accordance with specified requirements and to the satisfaction of the Minister or council, a plan of
- 20 action for the purposes of—
- (i) preventing the escape of litter from business premises; or
- (ii) keeping a specified area (not exceeding 100 metres) around business premises free from litter; and
- (g) may impose any other requirement prescribed by regulation; and
- 25 (h) must state that the person may, within 14 days, appeal against the notice to the Environment Resources and Development Court.
- (3) A notice under this section that relates to an activity or conditions on premises may be issued to—
- (a) the owner or occupier of the premises; or
- 30 (b) a person who has the management or control of the premises; or
- (c) trustee of a person referred to in subparagraph (a) or (b), or is managing the affairs of such a person on some other basis.
- (4) A notice under this section may be issued to a person by 2 or more councils jointly to prevent the person contravening a provision of this Act in those council areas.
- 35 (5) An authorised officer may, if of the opinion that urgent action is required, issue an emergency notice imposing a requirement of a kind referred to in subsection (2)(e) or as reasonably required in the circumstances.
- (6) An emergency notice may be issued orally, but, in that event, the person to whom the notice is issued must be advised forthwith of the person's right to appeal against the
- 40 notice to the Environment Resources and Development Court.

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Part 5—Nuisance abatement notices and litter abatement notices

(7) If an emergency notice is issued to a person by an authorised officer, the notice will cease to have effect on the expiration of 3 business days from the time of issuing unless confirmed by a notice issued by the Minister or council and served on the person.

5 (8) The Minister or a council may, by written notice served on a person to whom a notice under this section has been issued by the Minister or council, vary or revoke the notice.

(9) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.

10 Maximum penalty:

(a) in the case of a body corporate—\$60 000;

(b) in the case of a natural person—\$30 000.

Expiation fee: If the notice was issued to secure compliance with a requirement imposed by or under this Act and an expiation fee is fixed by this Act for
15 contravention of that requirement—that expiation fee.

(10) A person must not hinder or obstruct a person complying with a notice under this section.

Maximum penalty: \$25 000.

34—Action on non-compliance with notice

20 (1) If the requirements of a nuisance abatement notice or litter abatement notice issued by the Minister or a council are not complied with, the Minister or council may take any action required by the notice.

(2) Action to be taken under subsection (1) may be taken on behalf of the Minister or
25 council by an authorised officer or another person authorised by the Minister or council for the purpose.

(3) If a person other than an authorised officer is authorised to take action under subsection (2), the following provisions apply:

(a) the Minister or council must issue the person with an instrument of authority;

30 (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;

(c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;

35 (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.

(4) A person taking action under this section may enter any relevant premises or vehicle at any reasonable time.

40 (5) The reasonable costs and expenses incurred by the Minister or a council in taking action under this section may be recovered by the Minister or council as a debt from the person who failed to comply with the requirements of the notice.

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- 5 (6) If an amount is recoverable from a person under this section, the Minister or council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
- 10 (7) In addition, if an amount recoverable under this section relates to action taken in relation to any land (including a building or other structure on land), the amount will be a charge on the land in favour of the Minister or council in accordance with a scheme prescribed by the regulations (with a priority determined in accordance with the regulations).

35—Appeals

- 15 (1) A person who has been issued with a nuisance abatement notice or litter abatement notice may appeal to the Environment Resources and Development Court against the notice.
- 15 (2) An appeal—
- (a) must be instituted within 14 days after the notice is served on the person (or such longer period as the Court allows); and
 - (b) must be made in a manner and form determined by the Court, setting out the grounds of the appeal.
- 20 (3) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the appeal).
- (4) The Minister or a council is entitled to be a party to any proceedings under this section.

Part 6—Civil remedies and penalties

36—Civil remedies

- 25 (1) Application may be made to the Environment, Resources and Development Court for 1 or more of the following orders:
- 30 (a) if a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act—an order restraining the person from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person to take any specified action;
- 35 (b) if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act—an order requiring the person to take that action;
- (c) if a person has caused damage to property by a contravention of this Act—an order requiring the person to take specified action to make good the damage and, if appropriate, to take specified action to prevent or mitigate further damage;

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Part 6—Civil remedies and penalties

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- 5 (d) if the Minister or a council has incurred costs or expenses in taking action to prevent or mitigate damage caused by a contravention of this Act, or to make good resulting damage—an order against the person who committed the contravention for payment of the reasonable costs and expenses incurred in taking that action;
- 10 (e) if a person has suffered injury or loss or damage to property as a result of a contravention of this Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage—an order against the person who committed the contravention for payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred in taking that action;
- 15 (f) if a person who has been issued with a nuisance abatement notice or litter abatement notice has incurred costs and expenses in carrying out the requirements of the order or reimbursing the Minister or a council for action taken in pursuance of the order—an order for payment of the whole or a portion of the costs and expenses, as the Court considers appropriate, against 1 or more other persons who were liable for the costs and expenses;
- 20 (g) if the Court considers it appropriate to do so, an order against a person who has contravened this Act for payment (for the credit of the Consolidated Account) of an amount in the nature of exemplary damages determined by the Court.
- (2) The power of the Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised—
- 25 (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- 30 (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of causing local nuisance, littering or injury to persons or loss or damage to property if the first-mentioned person engages in conduct of that kind.
- (3) The power of the Court to make an order requiring a person to take specified action may be exercised—
- 35 (a) if the Court is satisfied that the person has refused or failed to take that action—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to take that action; or
- 40 (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will refuse or fail to take that action—whether or not the person has previously refused or failed to take that action and whether or not there is an imminent danger of causing local nuisance, littering or injury to persons or loss or damage to property if the first-mentioned person refuses or fails to take that action.

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- (4) In assessing an amount to be ordered in the nature of exemplary damages, the Court must have regard to—
- (a) any detriment to the public interest resulting from the contravention; and
 - (b) any financial saving or other benefit that the respondent stood to gain by committing the contravention; and
 - (c) any other matter it considers relevant.
- (5) The power to order payment of an amount in the nature of exemplary damages may only be exercised by a Judge of the Court.
- (6) An application under this section may be made—
- (a) by the Minister or a council; or
 - (b) by any person whose interests are affected by the subject matter of the application; or
 - (c) by any other person with the permission of the Court.
- (7) Before the Court may grant permission for the purposes of subsection (6)(c), the Court must be satisfied that—
- (a) the proceedings on the application would not be an abuse of the process of the Court; and
 - (b) there is a real or significant likelihood that the requirements for the making of an order under subsection (1) on the application would be satisfied; and
 - (c) it is in the public interest that the proceedings should be brought.
- (8) If an application is made by a person other than the Minister—
- (a) the applicant must serve a copy of the application on the Minister within 3 days after filing the application with the Court; and
 - (b) the Court must, on application by the Minister, join the Minister as a party to the proceedings.
- (9) If an application is made by a person other than the relevant council—
- (a) the applicant must serve a copy of the application on the relevant council within 3 days after filing the application with the Court; and
 - (b) the Court must, on application by the council, join the council as a party to the proceedings.
- (10) An application under this section may be made in a representative capacity (but, if so, the consent of all persons on whose behalf the application is made must be obtained).
- (11) An application may be made without notice to any person and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant permission to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- (12) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).

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Part 6—Civil remedies and penalties

(13) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

5 (14) An interim order—

- (a) may be made on an application without notice to any person; and
- (b) may be made whether or not the proceedings have been referred to a conference; and
- (c) will be made subject to such conditions as the Court thinks fit; and
- 10 (d) will not operate after the proceedings in which it is made are finally determined.

(15) If the Court makes an order requiring the respondent to take any specified action to make good any damage to property or to prevent or mitigate further damage, the provisions of Part 5 relating to—

- 15 (a) the taking of action by the Minister or a council on non-compliance with a nuisance abatement notice or litter abatement notice; and
- (b) the recovery of costs and expenses by the Minister or a council,

20 apply in relation to the Court's order in the same way as in relation to a nuisance abatement notice or litter abatement notice issued by the Minister or a council under that Part.

(16) The Court may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for the grant or variation of an environmental authorisation within the meaning of the *Environment Protection Act 1993* that should have been but was not made, or to remedy any other default.

25 (17) The Court may order an applicant in proceedings under this section—

- (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed;
- (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (18).

30 (18) If, on an application under this section alleging a contravention of this Act, the Court is satisfied—

- (a) that the respondent has not contravened this Act; and
- (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
- 35 (c) that in the circumstances it is appropriate to make an order under this provision,

40 the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage suffered by the respondent.

(19) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.

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- (20) Proceedings under this section based on a contravention of this Act may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time.
- 5 (21) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- (22) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.
- 10 (23) Without limiting the generality of subsection (22), in determining whether to make any order in relation to costs the Court may have regard to the following matters (so far as they are relevant):
- (a) whether the applicant is pursuing a personal interest only in bringing the proceedings or is furthering a wider group interest or the public interest;
- 15 (b) whether or not the proceedings raise significant issues relating to the administration of this Act.

37—Minister or relevant council may recover civil penalty in respect of contravention

- 20 (1) Subject to this section, if the Minister or a relevant council is satisfied that a person has committed an offence by contravening a provision of this Act, the Minister or council may, as an alternative to criminal proceedings, recover, by negotiation or by application to the Environment, Resources and Development Court an amount as a civil penalty in respect of the contravention.
- 25 (2) The Minister or a relevant council may not recover an amount under this section in respect of a contravention if the relevant offence requires proof of intention or some other state of mind, and must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under this section, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors.
- 30 (3) The Minister or a relevant council may not make an application to the Court under this section to recover an amount from a person as a civil penalty in respect of a contravention—
- (a) unless the Minister or council has served on the person a notice in the prescribed form advising the person that the person may, by written notice to
- 35 the Minister or council, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the notice to make such an election; or
- (b) if the person serves written notice on the Minister or council, before the
- 40 making of such an application, that the person elects to be prosecuted for the contravention.

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- (4) The maximum amount that the Minister or a relevant council may recover by negotiation as a civil penalty in respect of a contravention is the sum of the amount specified by this Act as the criminal penalty in relation to that contravention and the amount of any economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
- (5) If, on an application by the Minister or a council, the Environment, Resources and Development Court is satisfied on the balance of probabilities that a person has contravened a provision of this Act, the Court may order the person to pay to the Minister an amount as a civil penalty (but not exceeding the sum of the amount specified by this Act as the criminal penalty in relation to that contravention and the amount of any economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention).
- (6) In determining the amount to be paid by a person as a civil penalty, the Court must have regard to—
- (a) the nature and extent of the contravention; and
 - (b) any injury to persons, loss or damage to property or detriment to the public interest resulting from the contravention; and
 - (c) any financial saving or other benefit that the person stood to gain by committing the contravention; and
 - (d) whether the person has previously been found, in proceedings under this Act, to have engaged in any similar conduct; and
 - (e) any other matter it considers relevant.
- (7) The jurisdiction conferred by this section is to be part of the civil jurisdiction of the Court.
- (8) If conduct of a person constitutes a contravention of 2 or more provisions of this Act, an amount may be recovered from the person under this section in relation to the contravention of 1 or more of those provisions (provided that the person is not liable to pay more than 1 amount as a civil penalty in respect of the same conduct).
- (9) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to a contravention of this Act, or for enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (10) Proceedings referred to in subsection (9) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.
- (11) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—
- (a) the person gave the evidence or produced the documents in the course of negotiations or proceedings under this section for the recovery of an amount as a civil penalty in relation to a contravention of this Act; and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention.
- (12) However, subsection (11) does not apply to criminal proceedings in respect of the making of a false or misleading statement.

(13) Proceedings for an order under this section may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time within 10 years after the date of the alleged contravention.

5 (14) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings for an order under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

10 (15) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

Part 7—Miscellaneous

38—Constitution of the Environment, Resources and Development Court

15 The Environment, Resources and Development Court is to be constituted in the same way as in the *Environment Protection Act 1993* when exercising jurisdiction under this Act.

39—Delegation by Minister

(1) The Minister may delegate a function or power conferred on the Minister under this Act—

20 (a) to a specified person or body; or

(b) to a person occupying or acting in a specified office or position.

(2) A delegation—

(a) may be made subject to conditions or limitations specified in the instrument of delegation; and

25 (b) if the instrument of delegation so provides, may be further delegated by the delegate; and

(c) is revocable at will and does not prevent the delegator from acting personally in a matter.

40—Service of notices or other documents

30 (1) Subject to this section, if this Act requires or authorises a notice or other document to be served on, or given to, a person, the notice or document may—

(a) be served on, or given to, the person or an agent of the person; or

(b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or

35 (c) be sent by post to the person or an agent of the person at his or her last known address; or

(d) if the notice or document is to be served on the owner of land, the land is unoccupied, and the person seeking to serve the notice or document has taken reasonable steps to effect service under the other paragraphs of this subsection but has been unsuccessful—be served by fixing it to some
40 conspicuous part of the land; or

-
- (e) if the notice or document is to be served on the occupier of land—be sent by post to the occupier at the address of the land; or
- (f) be served on the person by fixing it to, or leaving it on, a vessel that the person is apparently in charge of, or expected to board at some stage, if the person giving or serving the notice or document has reasonable grounds to believe that service in this manner will bring the notice or document to the attention of the person to be served; or
- (g) be sent to the person by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been served or given at the time of transmission); or
- (h) be served or given in some other manner prescribed by the regulations.

(2) Without limiting subsection (1), a notice or document to be served on or given to a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth may be served or given in accordance with that Act.

(3) Subject to the regulations, a notice or document required or authorised to be given to an owner of land may, if it is to be served personally, be served on the owner, 1 of any joint owners, or the agent of the owner.

(4) A nuisance abatement notice or litter abatement notice must be served personally on the relevant person.

41—Immunity

(1) No personal liability attaches to—

- (a) the Minister; or
- (b) an authorised officer or any other person engaged in the administration of this Act,

for an honest act or omission in the performance, exercise or discharge, or purported performance, exercise or discharge, of a function, power or duty under this Act.

(2) Subject to subsection (3), a liability that would, but for subsection (1), lie against a person lies instead against the Crown.

(3) A liability that would, but for subsection (1), lie against an officer, employee, agent or contractor of a council lies instead against the council.

42—Protection from liability

A failure by the Minister or a council to perform a function under this Act, does not give rise to any civil liability.

43—Statutory declarations

If a person is required by or under this Act to provide information to the Minister or a council, the Minister or council may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been so verified.

44—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in a report or any other information furnished, or record kept, under this Act.

5 Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
- (b) in the case of a natural person—\$20 000.

45—Confidentiality

10 A person must not divulge any information relating to trade processes or financial information obtained (whether by that person or some other person) in the administration or enforcement of this Act except—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- 15 (c) in connection with the administration or enforcement of this Act; or
- (d) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act.

Maximum penalty: \$25 000.

46—Offences

20 (1) Proceedings for an offence against this Act may only be commenced by—

- (a) the Director of Public Prosecutions; or
- (b) the Minister; or
- (c) an authorised officer; or
- (d) the chief executive officer of a council; or
- 25 (e) a police officer; or
- (f) a person acting on the written authority of the Minister.

(2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of an authorisation under subsection (1)(f).

30

47—Offences and Environment, Resources and Development Court

Offences constituted by this Act lie within the criminal jurisdiction of the Environment, Resources and Development Court.

48—Orders in respect of contraventions

- 5 (1) If, in proceedings under this Act, the court finds that the defendant contravened this Act and the contravention has resulted in injury to a person or loss or damage to property, the court may, in addition to any penalty it may impose, do 1 or more of the following:
- (a) order the person to take specified action to make good any damage and, if appropriate, to take specified action to prevent or mitigate further damage;
- (b) order the person to take specified action to publicise the contravention and its consequences and any other orders made against the person;
- 10 (c) order the person to pay—
- (i) to the Minister or a council that has incurred costs or expenses in taking action to prevent or mitigate or make good any damage (including, in the case of litter, taking action to remove or clean up, and lawfully dispose of the litter); and
- 15 (ii) to any person who has suffered injury or loss or damage to property as a result of the contravention, or incurred costs or expenses in taking action to prevent or mitigate such injury, loss or damage (including, in the case of litter, taking action to remove or clean up, and lawfully dispose of the litter),
- 20 the reasonable costs and expenses so incurred, or compensation for the injury, loss or damage so suffered, as the case may be, in such amount as is determined by the court.
- (2) If a person is found by a court to have contravened this Act, the court may, in addition to any penalty it may impose, order the person to pay to the Minister or a council an amount not exceeding the court's estimation of the amount of the economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
- (3) For the purposes of subsection (2), an economic benefit obtained by delaying or avoiding costs will be taken to be an economic benefit acquired as a result of a contravention if the contravention can be attributed (in whole or in part) to that delay or avoidance.
- (4) The court may, by an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- 35 (5) An amount paid to the Minister in accordance with an order under subsection (2) must be paid into the Environment Protection Fund.

49—Offences by bodies corporate

- 40 (1) If a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(2) If a body corporate is guilty of an offence against this Act, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—

- 5 (a) the member knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
- (b) the member was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
- 10 (c) the member failed to exercise due diligence to prevent the commission of the offence.

50—Continuing offences

(1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—

- 15 (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one fifth of the maximum penalty prescribed for that offence; and
- (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a
- 20 penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one fifth of the maximum penalty prescribed for that offence.

(2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

25

51—Recovery of administrative and technical costs associated with contraventions

(1) If a person has contravened this Act and the Minister or a council—

- 30 (a) has taken action to—
- (i) investigate the contravention; or
- (ii) issue a nuisance abatement notice or litter abatement notice in respect of the contravention; or
- (iii) ensure that the person has complied with requirements imposed in
- 35 relation to the contravention by a nuisance abatement notice or litter abatement notice or by an order of a court under this Act; or
- (b) has, in taking such action, incurred costs and expenses in taking samples or in conducting tests, examinations, monitoring or analyses,

40 the Minister or council may, by notice in writing served on the person, require the person to pay to the Minister or council—

- (c) in respect of action to investigate the contravention or to issue a nuisance abatement notice or litter abatement notice in respect of the contravention—a fee fixed by, or calculated in accordance with, the regulations; or
- (d) in respect of action to ensure that the person has complied with requirements imposed in relation to the contravention by a nuisance abatement notice or litter abatement notice or by an order of a court under this Act—the reasonable costs and expenses incurred by the Minister or council in taking that action; or
- (e) in respect of costs and expenses incurred in taking samples or in conducting tests, examinations or analyses—the reasonable costs and expenses so incurred by the Minister or council.
- (2) Subject to subsection (3), an amount payable to the Minister or council in accordance with a notice under this section must be paid within the period specified in the notice.
- (3) On application by a person who has been served a notice under this section, the Minister or council that served the notice may, by notice in writing—
- (a) extend the time for payment of an amount payable in accordance with the notice; or
- (b) waive payment of such an amount or reduce the amount payable.
- (4) A person who fails to pay an amount payable to the Minister or council in accordance with this section is guilty of an offence.
- Maximum penalty: \$2 500.
Expiation fee: \$500.
- (5) If a notice is issued under this section in respect of a contravention and—
- (a) the contravention is the subject of an appeal; or
- (b) the notice requires payment of an amount in respect of the issue of a nuisance abatement notice or litter abatement notice in respect of the contravention and the nuisance abatement notice or litter abatement notice is the subject of an appeal,
- the first-mentioned notice is suspended until the appeal has been determined (but if the court, on appeal, finds that the contravention was committed or that the nuisance abatement notice or litter abatement notice was properly issued, as the case may be, the first-mentioned notice will have effect as if the period for payment specified in the notice commenced on the day on which the appeal was determined).
- (6) If an amount payable to the Minister or council is not paid in accordance with this section, the amount may be recovered as a debt by the Minister or council.

52—Assessment of reasonable costs and expenses

For the purposes of this Act, the reasonable costs and expenses that have been or would be incurred by the Minister, a council or some other person or body in taking any action are to be assessed by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by independent contractors engaged for that purpose.

53—Evidentiary provisions

- 5 (1) In proceedings for an offence against section 19 where it is alleged that the defendant caused local nuisance within the meaning of section 18(1)(a) or section 18(1)(b), evidence by an authorised officer that he or she formed the opinion based on his or her own senses that—
- (a) the agent alleged to have caused the local nuisance when discharged or emitted from a place occupied or a vehicle owned by the defendant travelled to a place occupied by another person; and
- 10 (b) the level, nature or extent of the agent within the place occupied by the other person was such as to constitute an unreasonable interference with the person's enjoyment of the place,
- constitutes proof, in the absence of proof to the contrary, of those matters.
- (2) In proceedings for an offence against section 19, 23 or 24, a certificate of an authorised officer certifying that, at a specified time—
- 15 (a) a specified place was a road, road-related area or other public place; or
- (b) a specified vehicle was stopped or parked in a specified place; or
- (c) a specified person was the owner or operator of a specified vehicle,
- constitutes proof, in the absence of proof to the contrary, of those matters.
- 20 (3) In proceedings for an offence against section 23, a certificate of an authorised officer certifying that—
- (a) specified matter was litter; or
- (b) a specified amount of litter was disposed of,
- constitutes proof, in the absence of proof to the contrary, of those matters.
- 25 (4) In proceedings, a certificate of the Minister, a council or an authorised officer certifying as to a matter relating to—
- (a) the appointment or non-appointment of a person as an authorised officer under this Act; or
- (b) a delegation or authority under this Act; or
- 30 (c) a notice, requirement or direction of the Minister, a council or an authorised officer under this Act; or
- (d) any other decision of the Minister, a council or an authorised officer; or
- (e) the receipt or non-receipt by the Minister, a council or an authorised officer of a notification, report or information given or required to be given or furnished to the Minister, council or authorised officer under this Act,
- 35 constitutes proof, in the absence of proof to the contrary, of the matters so certified.
- (5) In proceedings for the recovery of reasonable costs and expenses incurred by the Minister, a council or some other person or body, a certificate executed by the Minister or council detailing the costs and expenses and the purpose for which they were incurred constitutes proof, in the absence of proof to the contrary, of the matters
- 40 so certified.

- 5 (6) In proceedings, an apparently genuine document purporting to be an authorisation, notice, order, certificate or other document, or a copy of an authorisation, notice, order, certificate or other document, issued or executed by the Minister, a council or an authorised officer under this Act or the *Environment Protection Act 1993* will be accepted as such in the absence of proof to the contrary.

54—Regulations

- 10 (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- 15 (a) require the keeping of records, statistics and other forms of information by any person or body and the provision of reports based on that information;
- (b) fix fees to be paid in respect of any matter under this Act and regulate the payment, recovery, waiver or reduction of such fees;
- (c) exempt, either absolutely or subject to prescribed conditions or limitations—
- 20 (i) persons or classes of persons;
- (ii) areas of the State,
- from this Act or specified provisions of this Act;
- (d) impose fines, not exceeding \$10 000, for breach of a regulation;
- (e) fix expiation fees, not exceeding \$500, for alleged offences against the regulations.
- 25 (3) The regulations may adopt, wholly or partially and with or without modification—
- (a) a code, standard or guidelines relating to matters in respect of which regulations may be made under this Act; or
- (b) an amendment to such a code, standard or guidelines.
- 30 (4) The regulations or a code, standard or guidelines adopted by the regulations may—
- (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body or person, either as in force at the time the regulations are made or as in force from time to time; and
- 35 (b) be of general or limited application (including so as to apply only to a specified part of the State); and
- (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, a council or a prescribed person or body; and
- (e) include evidentiary provisions to facilitate proof of breaches of the regulations for the purposes of proceedings for offences; and
- (f) contain provisions of a savings or transitional nature.

(5) If—

- (a) a code, standard or guidelines are adopted by the regulations; or
- (b) the regulations, or a code, standard or guidelines adopted by the regulations, refer to a standard or other document prepared or published by a prescribed body,

then—

- (c) a copy of the code, standard, guidelines or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
- (d) in any legal proceedings, evidence of the contents of the code, standard, guidelines or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard, guidelines or other document; and
- (e) the code, standard, guidelines or other document has effect as if it were a regulation made under this Act.

(6) Before a regulation is made under this Act, the Minister must consult (in such manner as the Minister thinks fit) with the LGA and any councils or other persons or bodies likely to be affected by the regulation.

Schedule 1—Related amendments, repeal and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Local Government Act 1999*

2—Repeal of Chapter 11 Part 3

Chapter 11 Part 3—delete Part 3

Drafting note—

Part 3 (to be deleted as per above) consists of

235 - Deposit of rubbish etc

236 - Abandonment of vehicles and farm implements

237 - Removal of vehicles

The above sections are now to be dealt with at Part 4 of this Bill.

3—Repeal of section 240

Section 240—delete the section

Drafting note—

This clause deletes the bill-posting section from LGA - now to be dealt with in Part 4

Local Nuisance and Litter Control Bill 2015Schedule 1—Related amendments, repeal and transitional provisions

4—Amendment of section 254—Power to make orders

Section 254(1), table, items 1 and 3—delete items 1 and 3

Drafting note—

5 This clause deletes item 1 "Unightly condition of land" and 3 "Animals that may cause a nuisance or hazard". These items will be dealt with by regulations under Part 4 Division 1.

Part 3—Amendment of *Motor Vehicles Act 1959***5—Amendment of section 139D—Confidentiality**

Section 139D(1)(ea)—delete paragraph (ea) and substitute:

10 (ea) as may be required for the purposes of—

- (i) Part 9 Division 3 of the *Criminal Law (Sentencing) Act 1988*; or
- (ii) Part 4 Division 3 of the *Local Nuisance and Litter Control Act 2015*; or

Part 4—Amendment of *Summary Offences Act 1953***6—Repeal of section 48**

Section 48—delete the section

Drafting note—

15 This clause deletes the bill-posting section from SOA - now to be dealt with in Part 4