

[Act 2000 No 20]



New South Wales

Protection of the Environment Operations Amendment (Littering) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Protection of the Environment Operations Act 1997* and a regulation under that Act, so as to make further provision to deal with littering and to enact associated provisions.

The Bill:

- (a) creates a new general offence of littering, to apply in open private places as well as in public places, and
- (b) creates an aggravated form of this offence, to apply when the litter causes or is likely to cause or contribute to appreciable danger or harm to persons, animals, premises or property, and

* Amended in committee—see table at end of volume.

- (c) makes it an offence to deposit advertising material in any public or private place, except in a letter box or newspaper receptacle or under the door of any premises, and
- (d) makes it an offence to deposit advertising material in or on any vehicle in or on any place, and
- (e) makes it an offence to cause, ask, require or induce a person to do anything that would be an offence described in paragraph (c) or (d), and
- (f) designates a number of offences as penalty notice offences involving littering, and
- (g) enacts other provisions of a minor, consequential or ancillary nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Protection of the Environment Operations Act 1997* set out in Schedule 1.

Clause 4 (1) is a formal provision giving effect to the amendments to the *Protection of the Environment Operations (Penalty Notices) Regulation 1999* set out in Schedule 2. **Clause 4 (2)** makes it clear that the provisions of the *Interpretation Act 1987* relating to gazettal, commencement, notification and disallowance of statutory rules do not apply to these amendments.

Insertion of new Part and definitions relating to littering—Schedule 1 [3], [5] and [6]

A new Part 5.6A is proposed to be inserted into the Act, containing provisions relating to littering. Schedule 1 [5] inserts the new Part heading for this purpose, and Schedule 1 [3] makes a consequential amendment to the heading to the existing Part dealing with land pollution, so that it is limited to the transporting of waste and the use of land as a waste facility.

Schedule 1 [6] inserts a new section 144A, which contains definitions relating to expressions used in the new Part 5.6A relating to littering. The definition of *litter* is considerably expanded. The expression *open private place* is defined to mean in effect any private place, except a private place within a building. The expression *custodian* is defined as the owner of a place or vehicle or the person who has the care, control or management of a place or vehicle. The expression *depositing* is the

same in substance as the existing definition in section 145. Other defined expressions are *advertising material* (used in proposed sections 146A and 146B) and *vehicle* (used in various provisions in the new Part).

Littering and aggravated littering—Schedule 1 [7] and [8]

Section 145 is proposed to be replaced by a new section that makes it an offence to deposit litter in a public place or in an open private place. The present section applies to public places only. The maximum penalty for the offence will be 10 penalty units (currently \$1100). A number of exceptions are specified in the proposed section, and the provision is made for regulations to limit the places covered by the offence or to exclude activities from the offence.

Proposed section 145A provides that if a person commits the offence of littering in “circumstances of aggravation”, the person is guilty of the offence of aggravated littering. Circumstances of aggravation are circumstances in which the litter caused or contributed to appreciable danger or harm to any persons, animals, premises or property or was likely to do so. The maximum penalty for the offence will be 50 penalty units when committed by a corporation (currently \$5500) or 30 penalty units when committed by an individual (currently \$3300).

Schedule 1 [8] makes a consequential amendment.

Offences relating to advertising material—Schedule 1 [9]

Proposed sections 146A–146C create a series of offences relating to advertising material.

Proposed section 146A makes it an offence to deposit any advertising material in any public or private place, other than in a letter box or newspaper receptacle or under the door of any premises. A number of exceptions are provided. The maximum penalty for the offence will be 5 penalty units (currently \$550).

Proposed section 146B makes it an offence to deposit any advertising material in or on any vehicle wherever situated. A number of exceptions are provided. The maximum penalty for the offence will be 5 penalty units (currently \$550).

Proposed section 146C makes it an offence to cause, ask, require or induce a person to do anything that contravenes proposed section 146A or 146B. The maximum penalty for the offence will be 20 penalty units when committed by a corporation (currently \$2200) or 5 penalty units when committed by an individual (currently \$550).

Penalty notices—Schedule 1 [12] and [14] and Schedule 2

Schedule 2 [3] and [4] amend the *Protection of the Environment Operations (Penalty Notices) Regulation 1999* to create a number of penalty notice offences in connection with the proposed littering offences. Provision is made for certain littering offences under proposed section 145 to be dealt with according to the circumstances of the offence, so that certain offences regarded as being comparatively minor will be able to be dealt with by the issue of a penalty notice specifying a lower penalty of \$60, instead of \$200 (in the case of an individual) or \$400 (in the case of a corporation). Schedule 1 [14] and Schedule 2 [1] and [2] make consequential amendments.

Schedule 1 [12] replaces section 221 of the Act, to clarify the operation of the section. The substituted section 221 makes it clear that the limitations on the institution of environmental offences contained in Division 2 of Part 8.2 of the Act do not affect the issue of penalty notices for such offences (including littering offences) or the subsequent institution of court proceedings following the issue of a penalty notice.

Role of local councils—Schedule 1 [1], [2], [10], [13], [16] and [18]

The proposed Act will make the local council the appropriate regulatory authority in connection with premises occupied by the State or a public authority (but not activities carried on by the State or a public authority) and makes it clear that a local council is empowered to issue environment protection notices and any associated compliance cost notices in connection with littering and waste offences, and to institute proceedings for waste and other offences, on such premises.

Other amendments—Schedule 1 [4], [11], [15], [17] and [19]

The proposed Act contains other provisions of a minor, consequential or ancillary nature.

Schedule 1 [4] and [11] make consequential amendments.

Schedule 1 [15] makes it clear that the onus of proving an exception in relation to littering offences lies with the defendant, consistently with section 145A of the *Justices Act 1902*.

Schedule 1 [17] enables the making of regulations of a savings or transitional nature.

Schedule 1 [19] inserts a definition of *private place* into the Dictionary. It is defined as premises that are not a public place.