



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

- (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.

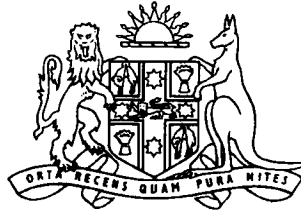


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Protection of the Environment Operations Amendment (Littering) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Protection of the Environment Operations Act 1997* and a Regulation under that Act in relation to littering; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Protection of the Environment Operations Amendment (Littering) Act 2000</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Protection of the Environment Operations Act 1997 No 156	8 9
The <i>Protection of the Environment Operations Act 1997</i> is amended as set out in Schedule 1.	10 11
4 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999	12 13
(1) The <i>Protection of the Environment Operations (Penalty Notices) Regulation 1999</i> is amended as set out in Schedule 2.	14 15
(2) Sections 39, 40 and 41 of the <i>Interpretation Act 1987</i> do not apply to the amendments set out in Schedule 2.	16 17

Schedule 1	Amendment of Protection of the Environment Operations Act 1997	1 2
	(Section 3)	3
[1]	Section 6 Appropriate regulatory authority	4
	Omit section 6 (2) (c). Insert instead:	5
	(c) activities carried on by the State or a public authority, whether at premises occupied by the State or a public authority or otherwise, or	6 7 8
[2]	Section 6 (3) (b)	9
	Omit “premises occupied by, or activities carried on by,”. Insert instead “activities carried on by”.	10 11
[3]	Part 5.6, heading	12
	Omit “ Land pollution ”. Insert instead “ Land pollution: waste ”.	13
[4]	Section 142 Definition	14
	Omit the definition of <i>relevant public authority</i> .	15
[5]	Part 5.6A, heading	16
	Insert after section 144:	17
	Part 5.6A Littering	18

[6] Section 144A	1
Insert in Part 5.6A before section 145:	2
144A Definitions	3
In this Part:	4
<i>advertising material</i> means any paper product (including a leaflet, brochure or magazine), or other material thing, that contains advertising or promotional matter.	5 6 7
<i>custodian</i> of a place or vehicle means the person who owns the place or vehicle or who has the care, control or management of the place or vehicle.	8 9 10
<i>depositing</i> litter in or on a place includes:	11
(a) dropping or throwing litter in, on, into or onto the place, or	12 13
(b) leaving litter in or on the place, or	14
(c) putting litter in such a location that it falls, descends, blows, is washed, percolates or otherwise escapes or is likely to fall, descend, blow, be washed, percolate or otherwise escape into or onto the place, or	15 16 17 18
(d) causing, permitting or allowing litter to fall, descend, blow, be washed, percolate or otherwise escape into or onto the place.	19 20 21
<i>litter</i> includes:	22
(a) any solid or liquid domestic or commercial refuse, debris or rubbish and, without limiting the generality of the above, includes any glass, metal, cigarette butts, paper, fabric, wood, food, abandoned vehicles, abandoned vehicle parts, construction or demolition material, garden remnants and clippings, soil, sand or rocks, and	23 24 25 26 27 28 29
(b) any other material, substance or thing deposited in or on a place if its size, shape, nature or volume makes the place where it is deposited disorderly or detrimentally affects the proper use of that place,	30 31 32 33
deposited in or on a place, whether or not it has any value when or after being deposited in or on the place.	34 35

<i>open private place</i> means:	1
(a) a private place that is situated in or on land and that is not within a building on the land, or	2 3
(b) a private place that is situated in or on waters.	4
<i>vehicle</i> means:	5
(a) any thing that is capable of transporting a person, including an aeroplane, vessel, bicycle, bus, car, horse, train or tram, or	6 7 8
(b) any trailer that is attached to any such thing, and includes a motor vehicle.	9 10
[7] Sections 145 and 145A	11
Omit section 145. Insert instead:	12
145 Littering generally	13
(1) Offence of littering	14
A person who deposits litter in or on a public place or an open private place is guilty of an offence.	15 16
Maximum penalty: 10 penalty units.	17
(2) Application of this section	18
This section applies whether the place is in or on land or is in or on waters, but (without limiting subsection (5) (b)) does not apply to a place or class of places prescribed by the regulations as being excluded from this section.	19 20 21 22
(3) Exceptions: public places	23
Subsection (1) does not apply to a person who deposited the litter in or on a public place, if the person:	24 25
(a) deposited the litter in or on the place:	26
(i) in a receptacle provided by the custodian of the place for the depositing of litter, and	27 28
(ii) in accordance with any conditions specified by the custodian, by means of a notice displayed on or in the vicinity of the receptacle, in relation to the depositing of litter in the receptacle, or	29 30 31 32

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Bill 2000

Schedule 1 Amendment of Protection of the Environment Operations Act 1997

(b)	placed a receptacle containing the litter in the place for the purpose of the litter being removed in the course of a litter removal service provided by the custodian of the place, or	1 2 3 4
(c)	deposited the litter in the place:	5
(i)	in response to an invitation contained in a notice published by the custodian of the place, and	6 7
(ii)	in accordance with any conditions specified in the notice in relation to the depositing of litter in that place, or	8 9 10
(d)	deposited the litter in the place with the express consent of the custodian of the place.	11 12
(4)	Exceptions: open private places	13
	Subsection (1) does not apply to a person who deposited the litter in or on an open private place, if the person:	14 15
(a)	deposited the litter in or on the place in any receptacle:	16
(i)	that is provided for the deposit of litter, and	17
(ii)	that is appropriate for litter of that size, shape, nature or volume, or	18 19
(b)	at the relevant time was the custodian of the place or was acting with the express or implied consent of the custodian of the place.	20 21 22
(5)	Exceptions: generally	23
	Subsection (1) does not apply to a person who deposited the litter in or on a place, if the person:	24 25
(a)	deposited the litter in the place under an authority conferred by or under this or any other Act or any Commonwealth Act, or	26 27 28
(b)	deposited the litter in accordance with any regulations made for the purposes of this section or in such circumstances as may be prescribed by any regulations made for the purposes of this section.	29 30 31 32

145A	Aggravated littering	1
(1)	Aggravated littering	2
	A person is guilty of the offence of aggravated littering under this section if the person commits an offence under section 145 in circumstances of aggravation.	3 4 5
	Maximum penalty (instead of any penalty under section 145):	6
	• in the case of a corporation—50 penalty units, or	7
	• in the case of an individual—30 penalty units.	8
(2)	Circumstances of aggravation	9
	For the purposes of this section, <i>circumstances of aggravation</i> means circumstances in which the litter deposited by the alleged offender:	10 11 12
	(a) caused or contributed to appreciable danger or harm to any persons, animals, premises or property, or	13 14
	(b) was reasonably likely to cause or contribute to such danger or harm (whether or not any such danger or harm was actually caused),	15 16 17
	because of the volume or kind of litter deposited, or the manner in which it was deposited, or the place in or on which it was deposited.	18 19 20
(3)	Aggravation not proved	21
	If the court is satisfied that a person charged with the offence of aggravated littering is not guilty of that offence but is satisfied on the evidence that the person is guilty of an offence under section 145, the court may find the person guilty of the offence under that section, and the person is liable to punishment accordingly.	22 23 24 25 26 27
[8]	Section 146 Owners and drivers of motor vehicles involved in littering	28
	Insert “or 145A” after “145” in section 146 (1).	29

[9] Sections 146A–146C	1
Insert after section 146:	2
146A Depositing of advertising material	3
(1) Offence	4
A person must not deposit any advertising material in or on any place, other than:	5
(a) in a receptacle that is provided for the deposit of mail, or	6
(b) in a receptacle that is provided for the deposit of newspapers, or	7
(c) under the door of any premises.	8
Maximum penalty: 5 penalty units.	9
(2) Application of this section	10
This section applies whether the place is a public place or a private place, and whether the place is in or on land or is in or on waters, but does not apply to the deposit of any advertising material in or on a vehicle.	11
(3) Exceptions	12
This section does not apply to the deposit of:	13
(a) any newspaper, or any material folded or inserted in a newspaper, or	14
(b) anything that is of such a size, shape or volume that it is not possible or appropriate for it to be deposited in accordance with subsection (1) (a)–(c), or	15
(c) anything in a place by a person who is the custodian of the place or is acting with the express consent of the custodian of the place, or	16
(d) anything by a person who deposits it in accordance with any regulations made for the purposes of this section or in such circumstances as may be prescribed by any regulations made for the purposes of this section.	17

146B	Advertising material not to be placed in or on vehicles	1
(1)	Offence	2
	A person must not deposit any advertising material in or on any vehicle.	3 4
	Maximum penalty: 5 penalty units.	5
(2)	Application of this section	6
	This section applies whether the vehicle is situated in or on a public place or a private place.	7 8
(3)	Exceptions	9
	This section does not apply to the deposit of:	10
(a)	any material by a person who is the custodian of the vehicle or is acting with the express consent of the custodian of the vehicle, or	11 12 13
(b)	any material by a person who deposits it in accordance with any regulations made for the purposes of this section or in such circumstances as may be prescribed by any regulations made for the purposes of this section.	14 15 16 17
(4)	For the purposes of subsection (3) (a), a person is not the custodian of a vehicle parked at a parking station merely because the person is the custodian of the parking station. In this subsection, <i>parking station</i> means a place (such as a car park) provided for the parking of vehicles, and includes a place or place of a class prescribed by the regulations.	18 19 20 21 22 23
146C	Offence to cause or ask person to commit offence	24
	A person must not cause, ask, require or induce, or attempt to cause, ask, require or induce, another person to do anything that contravenes or would contravene section 146A or 146B.	25 26 27
	Maximum penalty:	28
	• in the case of a corporation—20 penalty units, or	29
	• in the case of an individual—5 penalty units.	30

[10] Section 218 Other authorities who may also institute proceedings	1
Omit section 218 (6) (c). Insert instead:	2
(c) activities carried on by the State or a public authority, whether at premises occupied by the State or a public authority or otherwise, or	3 4 5
[11] Section 218 (7)	6
Omit the definition of <i>littering offence</i> . Insert instead:	7
<i>littering offence</i> means an offence arising under Part 5.6A.	8
[12] Section 221	9
Omit the section. Insert instead:	10
221 Penalty notices and related proceedings	11
(1) This Division does not affect the power to issue a penalty notice under Division 3 or the taking of enforcement proceedings in relation to the penalty notice or in relation to the offence to which the penalty notice relates.	12 13 14 15
(2) Enforcement proceedings include proceedings under Part 3 or 4 of the <i>Fines Act 1996</i> , including, in particular, proceedings taken under section 37 of that Act in respect of the offence to which the penalty notice relates, where the person concerned elects to have the matter dealt with by a court.	16 17 18 19 20
(3) Proceedings referred to in subsection (2) in respect of the offence to which the penalty notice relates may be instituted:	21 22
(a) by a person who is an authorised officer within the meaning of section 226 in relation to the class of offence concerned, or	23 24 25
(b) if such an authorised officer is an officer or employee of a public authority—by the public authority, or by an officer or employee of the public authority under section 220.	26 27 28 29

[13] Section 226 Authorised officers	1
Insert after section 226 (2):	2
(3) Only an officer or employee of the EPA can be an authorised officer in relation to:	3
(a) an offence alleged to have been committed in relation to activities or work authorised or controlled by an environment protection licence, or	4
(b) an offence alleged to have been committed in relation to activities carried on by the State or a public authority.	5
[14] Section 227 Penalty payable	6
Insert after section 227 (2):	7
(3) The regulations may prescribe different penalties for the same penalty notice offence.	8
[15] Section 256 Onus of proof of certain matters	9
Insert at the end of the section:	10
(2) In any proceedings for an offence under Part 5.6A, the onus of proving an exception under section 145 (3)–(5), 146A (3) or 146B (3) lies with the defendant, but nothing in this subsection affects the construction or operation of any other provision of this Act.	11
[16] Section 323 Regulations	12
Insert after section 323 (6):	13
(7) Without limiting the power to make regulations, the regulations may contain provisions of a savings or transitional nature consequent on the making of a regulation for the purposes of section 6 (3).	14
[17] Schedule 5 Savings, transitional and other provisions	15
Insert at the end of clause 2 (1):	16
<i>Protection of the Environment Operations Amendment (Littering) Act 2000</i>	17
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[18] Schedule 5, Part 8	1
Insert after Part 7:	2
Part 8 Provisions consequent on enactment of Protection of the Environment Operations Amendment (Littering) Act 2000	3 4 5
15 EPA ceasing to be appropriate regulatory authority in relation to certain premises	6 7
(1) A notice, direction or requirement that:	8
(a) was made, issued or given under this Act by the EPA in its capacity as appropriate regulatory authority because of section 6 (2) (c) as in force before the commencement of the amendment to section 6 (2) made by the <i>Protection of the Environment Operations Amendment (Littering) Act 2000</i> (or by an authorised officer of the EPA), and	9 10 11 12 13 14 15
(b) was made, issued or given under this Act before that commencement, and	16 17
(c) is in force on that commencement, and	18
(d) is not excluded from the operation of this clause by the regulations,	19 20
continues to have effect for the purposes of this Act.	21
(2) Any such notice, direction or requirement may be dealt with and enforced in accordance with this Act as in force before that commencement, as if the EPA were still the appropriate regulatory authority.	22 23 24 25
(3) A compliance cost notice may be given, dealt with and enforced after that commencement in connection with any such notice, direction or requirement, as if the EPA were still the appropriate regulatory authority.	26 27 28 29

16	Local authority as appropriate regulatory authority in relation to certain premises	1 2
(1)	A notice, direction or requirement that:	3
(a)	purported to have been made, issued or given under this Act by a local authority as appropriate regulatory authority before the commencement of the amendment to section 6 (2) made by the <i>Protection of the Environment Operations Amendment (Littering) Act 2000</i> (or by an authorised officer of the local authority), and	4 5 6 7 8 9 10
(b)	was not validly made, issued or given, but would have been validly made, issued or given had that amendment been in force when it purported to have been made, issued or given, and	11 12 13 14
(c)	is not excluded from the operation of this clause by the regulations,	15 16
	is taken to have been validly made, issued or given under this Act at the time at which it purported to have been made, issued or given and to be valid at all relevant times since.	17 18 19
(2)	Any such notice, direction or requirement may be dealt with and enforced in accordance with this Act, as if the local authority had always been the appropriate regulatory authority.	20 21 22
(3)	A compliance cost notice may be given, dealt with and enforced after that commencement in connection with any such notice, direction or requirement, as if the local authority had always been the appropriate regulatory authority.	23 24 25 26
(4)	Any proceedings purporting to be instituted by a local authority (or by an officer or employee of the local authority) before the commencement of the amendments to sections 6 (2) and 218 (6) made by the <i>Protection of the Operations Amendment (Littering) Act 2000</i> for an offence committed in relation to premises occupied by the State or by a public authority are taken to have been validly instituted.	27 28 29 30 31 32 33
[19]	Dictionary	34
	Insert in appropriate order:	35
	<i>private place</i> means any premises that are not a public place.	36

Schedule 2	Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999	1
		2
		3
	(Section 4)	4
[1]	Clause 5 Penalty notice offences: section 222	5
	Insert at the end of the clause:	6
	(2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.	7 8 9 10 11 12
[2]	Clause 9 Short descriptions: section 145B of Justices Act 1902	13
	Insert after clause 9 (1):	14
	(1A) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.	15 16 17 18 19 20
[3]	Schedule 1 Penalty notice offences	21
	Omit the matter relating to section 145 from the matter appearing under the heading “ Protection of the Environment Operations Act 1997 ”.	22 23

[4] Schedule 1						1
Insert in appropriate order in the matter appearing under the heading						2
“Protection of the Environment Operations Act 1997”:						3
Section 145:	Deposit litter (small item)	1, 2, 3, 4,	\$60	—		4
Deposit litter, being a		5, 7, 8, 9,				5
small item including		10, 11, 12,				6
confectionary wrapper,		13				7
cigarette packet, ATM						8
statement, or bus or train						9
ticket (excluding						10
cigarette, and excluding						11
litter deposited from						12
vehicle)						13
Section 145:	Deposit litter	1, 2, 3, 4,	\$200	\$400		14
Deposit litter (excluding		5, 7, 8, 9,				15
cigarette, and excluding		10, 11, 12,				16
litter deposited from		13				17
vehicle)						18
Section 145:	Deposit litter	1, 2, 3, 4,	\$60	—		19
Deposit litter, being	(extinguished cigarette)	5, 7, 8, 9,				20
unlit or extinguished		10, 11, 12,				21
cigarette (excluding		13				22
litter deposited from						23
vehicle)						24
Section 145:	Deposit litter (lit cigarette)	1, 2, 3, 4,	\$200	—		25
Deposit litter, being lit		5, 7, 8, 9,				26
cigarette (excluding		10, 11, 12,				27
litter deposited from		13				28
vehicle)						29
Section 145:	Deposit litter from vehicle	1, 2, 3, 4,	\$200	\$400		30
Deposit litter from		5, 7, 8, 9,				31
vehicle		10, 11, 12,				32
		13				33
Section 145A	Deposit litter in	1, 2, 3, 4,	\$375	\$750		34
	circumstances of	5, 7, 8, 9,				35
	aggravation	10, 11, 12,				36
		13				37

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Schedule 2 Amendment of Protection of the Environment Operations (Penalty
 Notices) Regulation 1999

Section 146A	Deposit advertising material in place	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$200	\$400	1 2 3 4
Section 146B	Deposit advertising material on vehicle	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$200	\$400	5 6 7 8
Section 146C	Cause or ask person to contravene section 146A or 146B	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$200	\$400	9 10 11 12