

Passed by both Houses



New South Wales

# Protection of the Environment Operations Amendment (Littering) Bill 2000

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2000*



New South Wales

## **Protection of the Environment Operations Amendment (Littering) Bill 2000**

Act No , 2000

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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.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Protection of the Environment Operations Amendment (Littering) Act 2000*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Protection of the Environment Operations Act 1997 No 156**

The *Protection of the Environment Operations Act 1997* is amended as set out in Schedule 1.

**4 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999**

- (1) The *Protection of the Environment Operations (Penalty Notices) Regulation 1999* is amended as set out in Schedule 2.
- (2) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the amendments set out in Schedule 2.

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## **Schedule 1    Amendment of Protection of the Environment Operations Act 1997**

(Section 3)

**[1]    Section 6 Appropriate regulatory authority**

Omit section 6 (2) (c). Insert instead:

- (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

**[2]    Section 6 (3) (b)**

Omit “premises occupied by, or activities carried on by,”.  
Insert instead “activities carried on by”.

**[3]    Part 5.6, heading**

Omit “**Land pollution**”. Insert instead “**Land pollution: waste**”.

**[4]    Section 142 Definition**

Omit the definition of *relevant public authority*.

**[5]    Part 5.6A, heading**

Insert after section 144:

### **Part 5.6A    Littering**

**[6] Section 144A**

Insert in Part 5.6A before section 145:

**144A Definitions**

In this Part:

***advertising material*** means any paper product (including a leaflet, brochure or magazine), or other material thing, that contains advertising or promotional matter.

***custodian*** 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.

***depositing*** litter in or on a place includes:

- (a) dropping or throwing litter in, on, into or onto the place, or
- (b) leaving litter in or on the place, or
- (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
- (d) causing, permitting or allowing litter to fall, descend, blow, be washed, percolate or otherwise escape into or onto the place.

***litter*** includes:

- (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
- (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,

deposited in or on a place, whether or not it has any value when or after being deposited in or on the place.

***open private place*** means:

- (a) a private place that is situated in or on land and that is not within a building on the land, or
- (b) a private place that is situated in or on waters.

***vehicle*** means:

- (a) any thing that is capable of transporting a person, including an aeroplane, vessel, bicycle, bus, car, horse, train or tram, or
- (b) any trailer that is attached to any such thing, and includes a motor vehicle.

**[7] Sections 145 and 145A**

Omit section 145. Insert instead:

**145 Littering generally**

**(1) Offence of littering**

A person who deposits litter in or on a public place or an open private place is guilty of an offence.

Maximum penalty: 10 penalty units.

**(2) Application of this section**

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.

**(3) Exceptions: public places**

Subsection (1) does not apply to a person who deposited the litter in or on a public place, if the person:

- (a) deposited the litter in or on the place:
  - (i) in a receptacle provided by the custodian of the place for the depositing of litter, and
  - (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

- (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
- (c) deposited the litter in the place:
  - (i) in response to an invitation contained in a notice published by the custodian of the place, and
  - (ii) in accordance with any conditions specified in the notice in relation to the depositing of litter in that place, or
- (d) deposited the litter in the place with the express consent of the custodian of the place.

(4) **Exceptions: open private places**

Subsection (1) does not apply to a person who deposited the litter in or on an open private place, if the person:

- (a) deposited the litter in or on the place in any receptacle:
  - (i) that is provided for the deposit of litter, and
  - (ii) that is appropriate for litter of that size, shape, nature or volume, or
- (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.

(5) **Exceptions: generally**

Subsection (1) does not apply to a person who deposited the litter in or on a place, if the person:

- (a) deposited the litter in the place under an authority conferred by or under this or any other Act or any Commonwealth Act, or
- (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.

**145A Aggravated littering**

(1) **Aggravated littering**

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.

Maximum penalty (instead of any penalty under section 145):

- in the case of a corporation—50 penalty units, or
- in the case of an individual—30 penalty units.

(2) **Circumstances of aggravation**

For the purposes of this section, *circumstances of aggravation* means circumstances in which the litter deposited by the alleged offender:

- (a) caused or contributed to appreciable danger or harm to any persons, animals, premises or property, or
- (b) was reasonably likely to cause or contribute to such danger or harm (whether or not any such danger or harm was actually caused),

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.

(3) Without limiting subsection (2), a reference in that subsection to litter includes a reference to a lit cigarette.

(4) For the purposes of this section, *circumstances of aggravation* also means circumstances in which the litter deposited by the alleged offender comprised or included a syringe. It is not necessary to establish, in relation to those circumstances, the matters referred to in subsection (2).

(5) **Aggravation not proved**

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.



(6) **Definition**

In this section:

*syringe* means a hypodermic syringe, and includes anything designed for use or intended to be used as part of such a syringe, and also includes a needle designed for use or intended to be used in connection with such a syringe.

**[8] Section 146 Owners and drivers of motor vehicles involved in littering**

Insert “or 145A” after “145” in section 146 (1).

**[9] Sections 146A–146D**

Insert after section 146:

**146A Depositing of advertising material**

(1) **Offence**

A person must not deposit any advertising material in or on any place, other than:

- (a) in a receptacle that is provided for the deposit of mail, or
- (b) in a receptacle that is provided for the deposit of newspapers, or
- (c) under the door of any premises.

Maximum penalty: 5 penalty units.

(2) **Application of this section**

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.

(3) **Exceptions**

This section does not apply to the deposit of:

- (a) any newspaper, or any material folded or inserted in a newspaper, or
- (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

- (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
- (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.

**146B Advertising material not to be placed in or on vehicles**

(1) **Offence**

A person must not deposit any advertising material in or on any vehicle.

Maximum penalty: 5 penalty units.

(2) **Application of this section**

This section applies whether the vehicle is situated in or on a public place or a private place.

(3) **Exceptions**

This section does not apply to the deposit of:

- (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
  - (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.
- (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, ***parking station*** 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.

**146C Offence to cause or ask person to commit offence**

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.

Maximum penalty:

- in the case of a corporation—30 penalty units, or
- in the case of an individual—7 penalty units.

**146D Littering reports**

- (1) The EPA is required to furnish to the Minister a biennial report on littering.
- (2) The report is to contain estimates of the type of material that comprises litter deposited during the period concerned and the quantity (by weight and volume) of each such type of material, by reference to locations considered by the EPA to be places of significant littering activity.
- (3) The EPA must cause advertisements to be published setting out the proposed methodology to be used in compiling such reports and inviting comments from members of the public concerning the proposed methodology. The EPA must allow at least 30 days for such comments to be made, and must consider comments received within the time allowed.
- (4) The Minister is to cause a copy of each report to be laid before both Houses of Parliament within 30 sitting days after receiving the report.
- (5) If the Minister or the State Waste Advisory Council, after consideration of the report, is of the opinion that:
  - (a) the managers or other persons responsible for any of the locations referred to in subsection (2), or
  - (b) the producers of or other persons responsible for any products whose components or packaging comprise litter at any such locations,

are not acting in a manner that minimises littering, the Minister may make recommendations aimed at improving litter avoidance strategies.

**[10] Section 218 Other authorities who may also institute proceedings**

Omit section 218 (6) (c). Insert instead:

- (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

**[11] Section 218 (7)**

Omit the definition of *littering offence*. Insert instead:

*littering offence* means an offence arising under Part 5.6A.

**[12] Section 221**

Omit the section. Insert instead:

**221 Penalty notices and related proceedings**

- (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.
- (2) Enforcement proceedings include proceedings under Part 3 or 4 of the *Fines Act 1996*, 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.
- (3) Proceedings referred to in subsection (2) in respect of the offence to which the penalty notice relates may be instituted:
  - (a) by a person who is an authorised officer within the meaning of section 226 in relation to the class of offence concerned, or
  - (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.

**[13] Section 226 Authorised officers**

Insert after section 226 (2):

- (3) Only an officer or employee of the EPA can be an authorised officer in relation to:
  - (a) an offence (other than a littering offence) alleged to have been committed in relation to activities or work authorised or controlled by an environment protection licence, or
  - (b) an offence (other than a littering offence) alleged to have been committed in relation to activities carried on by the State or a public authority.
- (4) In this section, *littering offence* means an offence arising under Part 5.6A.

**[14] Section 227 Penalty payable**

Insert after section 227 (2):

- (3) The regulations may prescribe different penalties for the same penalty notice offence.

**[15] Section 256 Onus of proof of certain matters**

Insert at the end of the section:

- (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.

**[16] Section 323 Regulations**

Insert after section 323 (6):

- (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).

**[17] Schedule 5 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Protection of the Environment Operations Amendment  
(Littering) Act 2000*

**[18] Schedule 5, Part 8**

Insert after Part 7:

**Part 8 Provisions consequent on enactment of  
Protection of the Environment Operations  
Amendment (Littering) Act 2000**

**15 EPA ceasing to be appropriate regulatory authority in relation to  
certain premises**

- (1) A notice, direction or requirement that:
- (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 *Protection of the Environment Operations Amendment (Littering) Act 2000* (or by an authorised officer of the EPA), and
  - (b) was made, issued or given under this Act before that commencement, and
  - (c) is in force on that commencement, and

(d) is not excluded from the operation of this clause by the regulations,

continues to have effect for the purposes of this Act.

- (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.
- (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.

**16 Local authority as appropriate regulatory authority in relation to certain premises**

- (1) A notice, direction or requirement that:
  - (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 *Protection of the Environment Operations Amendment (Littering) Act 2000* (or by an authorised officer of the local authority), and
  - (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
  - (c) is not excluded from the operation of this clause by the regulations,

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.

- (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.

- (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.
- (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 *Protection of the Operations Amendment (Littering) Act 2000* for an offence committed in relation to premises occupied by the State or by a public authority are taken to have been validly instituted.

**[19] Dictionary**

Insert in appropriate order:

*private place* means any premises that are not a public place.



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

(Section 4)

### **[1]      Clause 5 Penalty notice offences: section 222**

Insert at the end of the clause:

- (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.

### **[2]      Clause 9 Short descriptions: section 145B of Justices Act 1902**

Insert after clause 9 (1):

- (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.

### **[3]      Schedule 1 Penalty notice offences**

Omit the matter relating to section 145 from the matter appearing under the heading "**Protection of the Environment Operations Act 1997**".

**[4] Schedule 1**

Insert in appropriate order in the matter appearing under the heading  
**“Protection of the Environment Operations Act 1997”:**

Section 145: Deposit litter, being a small item including confectionary wrapper, cigarette packet, ATM statement, or bus or train ticket (excluding cigarette, and excluding litter deposited from vehicle)	Deposit litter (small item)	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$60	—
Section 145: Deposit litter (excluding cigarette, and excluding litter deposited from vehicle)	Deposit litter	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$200	\$400
Section 145: Deposit litter, being unlit or extinguished cigarette (excluding litter deposited from vehicle)	Deposit litter (extinguished cigarette)	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$60	—
Section 145: Deposit litter, being lit cigarette (excluding litter deposited from vehicle)	Deposit litter (lit cigarette)	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$200	—
Section 145: Deposit litter from vehicle	Deposit litter from vehicle	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$200	\$400
Section 145A: Deposit litter, for example syringe, or lit cigarette in dangerous circumstances	Deposit litter in circumstances of aggravation	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$375	\$750

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

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Section 146A	Deposit advertising material in place	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$200	\$400
Section 146B	Deposit advertising material on vehicle	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13	\$200	\$400
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