



Queensland

# **Environmental Protection Amendment Act 2007**

**Act No. 44 of 2007**





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## **Act No. 44 of 2007**

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**An Act to amend the *Environmental Protection Act 1994***

**[Assented to 25 October 2007]**

**The Parliament of Queensland enacts—****1 Short title**

This Act may be cited as the *Environmental Protection Amendment Act 2007*.

**2 Commencement**

This Act commences on a day to be fixed by proclamation.

**3 Act amended**

This Act amends the *Environmental Protection Act 1994*.

**4 Insertion of new ch 8, pt 3A**

After section 440—

*insert—*

**‘Part 3A                      Offences relating to depositing  
   litter****‘Division 1                      Preliminary****‘440A Definitions for pt 3A**

‘In this part—

*deposit*, litter, at a place, means—

- (a) throw, drop or otherwise put the litter on the place; or
- (b) leave the litter at the place; or
- (c) deal with the litter in a way that causes or allows it to fall, blow, wash or otherwise escape onto the place.

*Examples for paragraph (c)—*

A person disposes of litter on a road if the person—

- (a) transports the litter in a trailer in a way that causes the litter to be blown out of the trailer and onto the road; or
- (b) leaves the litter on private land where it is then washed by rain onto the road.

***litter*** see section 440B.

***place*** includes premises and a place, including a public place, on land.

*Note—*

Under schedule 3, *land* is defined to include waters.

### **‘440B Meaning of litter**

‘(1) ***Litter*** includes—

- (a) any waste of a commercial or domestic nature; and
- (b) anything that may reasonably be considered to be refuse, debris or rubbish; and

*Examples of material likely to be litter under paragraph (b)—*

- discarded glass, metal, wood, plastic, paper, fabric or food
- discarded soil, sand, concrete or rock
- garden remnants and clippings

(c) an abandoned vehicle or an abandoned part of a vehicle.

‘(2) However, ***litter*** does not include any gas, dust or smoke emitted or produced—

- (a) during, or as a result of, the normal operations of any industry; or
- (b) from machinery used for domestic purposes.

## **‘Division 2                    General offence**

### **‘440C When deposit of litter unlawful**

‘(1) For this part, the deposit of litter by a person at a place is unlawful unless—

- (a) the person is an occupier of the place; or

- (b) the person deposits the litter with the consent of an occupier of the place; or
- (c) the person deposits the litter by placing it in a litter bin or other container provided by an occupier of the place for the purpose of depositing litter.

‘(2) In this section—

***occupier***, of a place, includes a person who exercises or may exercise lawful authority or control in relation to the place.

### ‘440D Depositing litter

‘(1) A person must not unlawfully deposit litter at a place unless the person has a reasonable excuse.

Maximum penalty—

- (a) if the offence involves depositing 200L or more of litter—165 penalty units; or
- (b) if the offence involves dangerous littering or involves depositing more than 20L but less than 200L of litter—40 penalty units; or
- (c) if the offence involves depositing litter from a vehicle—30 penalty units; or
- (d) otherwise—20 penalty units.

‘(2) In this section—

***dangerous littering*** means depositing litter that causes or is likely to cause harm to a person, animal or property.

*Examples of dangerous littering—*

- throwing a lit cigarette onto dry grass in extreme fire danger conditions
- smashing a bottle and leaving the broken glass on a footpath

## ‘Division 3                      Vehicle littering offence

### ‘440E Definitions for div 3

‘In this division—



**passenger declaration**, for a vehicle littering offence, means a statutory declaration, made by a prescribed person for the offence, stating—

- (a) that the person was not the person who deposited the litter; and
- (b) the name and address of the person who deposited the litter.

**prescribed person**, for a vehicle littering offence, means—

- (a) the person in whose name the vehicle associated with the commission of the offence is registered under a registration Act; or
- (b) a person named in a known user declaration or a sold vehicle declaration under the *State Penalties Enforcement Act 1999* in relation to the offence.

**vehicle littering offence** see section 440F.

### **‘440F Application of div 3**

- ‘(1) This division applies to an offence against 440D that is a vehicle littering offence.
- ‘(2) An offence against 440D is a **vehicle littering offence** if—
  - (a) the offence is committed by a person who is, or becomes, an occupant of a vehicle that is associated with the commission of the offence; and
  - (b) under the *State Penalties Enforcement Act 1999*, an offence against section 440D is prescribed to be an offence to which that Act applies.
- ‘(3) A vehicle is associated with the commission of an offence against section 440D if, for example, the person who committed the offence—
  - (a) was in the vehicle when the offence was committed; or
  - (b) used the vehicle to transport litter to a place where the offence was committed; or
  - (c) committed the offence near the vehicle and before entering the vehicle.

- ‘(4) Despite subsection (1), this division does not apply to a vehicle littering offence if—
- (a) the vehicle associated with the commission of the offence was a public passenger vehicle being used to transport members of the public; and
  - (b) the offence was committed by a person other than the driver of the vehicle.

#### ‘440G Application of State Penalties Enforcement Act 1999

- ‘(1) For the *State Penalties Enforcement Act 1999*, a vehicle littering offence is an offence involving a vehicle as defined under that Act.
- ‘(2) For applying the *State Penalties Enforcement Act 1999* to a vehicle littering offence, the references in sections 17(3), 22(1)(c), 33(1)(d) and 157(2)(j) to an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration are taken to include a reference to a passenger declaration.
- ‘(3) Subsection (2) does not affect a person’s right under the *State Penalties Enforcement Act 1999*, section 17(3) to give a SPEA declaration for a vehicle for the offence.
- ‘(4) However, if a person gives a passenger declaration for the offence, another person may not give a SPEA declaration or a passenger declaration for the same offence.
- ‘(5) In this section—
- SPEA declaration*** means an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration under the *State Penalties Enforcement Act 1999*.

#### ‘440H Effect of passenger declaration

- ‘(1) This section applies if—
- (a) a vehicle littering offence happens; and
  - (b) an infringement notice for the offence is served on a prescribed person for the offence; and

- (c) the prescribed person makes and gives to the administering authority for the infringement notice a passenger declaration for the offence.
- ‘(2) The *State Penalties Enforcement Act 1999*, section 17<sup>1</sup> applies as if the person named in the declaration as the person who deposited the litter (the *passenger*) were the owner of the vehicle at the relevant time and date.
- ‘(3) A proceeding for the offence may be started against the passenger only if a copy of the declaration has been served on the passenger.
- ‘(4) In a proceeding for the offence against the passenger, the declaration is evidence that the passenger deposited the litter at the relevant time and date.
- ‘(5) In a proceeding for the offence against the prescribed person, a court must not find the prescribed person guilty of the offence if it is satisfied, whether on the statements contained in the declaration or otherwise, the prescribed person did not deposit the litter at the relevant time and date.
- ‘(6) In this section—
- administering authority*, for the infringement notice, means the administering authority for the notice under the *State Penalties Enforcement Act 1999*.
- relevant time and date* means the time and date specified in the infringement notice as the time and date of the vehicle littering offence.

#### ‘440I Service of infringement notice for vehicle littering offence

- ‘(1) An infringement notice for a vehicle littering offence may be served on the person named in a passenger declaration as the person who deposited the litter.
- ‘(2) If the infringement notice is to be served by post, the notice may be addressed to the person at the person’s address stated in the declaration.

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1 *State Penalties Enforcement Act 1999*, section 17 (Liability for infringement notice offences involving vehicles)

**‘440J Chief executive (transport) must disclose information**

- ‘(1) This section applies if—
- (a) an authorised person is reasonably satisfied that vehicle registry information may be used—
    - (i) in a proceeding against a person for a vehicle littering offence; or
    - (ii) for the service of an infringement notice on a person for a vehicle littering offence; and
  - (b) the authorised person asks the chief executive (transport) for the information.
- ‘(2) The chief executive (transport) must disclose the information to the authorised person if—
- (a) the chief executive (transport) reasonably considers that the information may be used—
    - (i) in a proceeding against the person for the vehicle littering offence; or
    - (ii) for the service of an infringement notice on the person for the vehicle littering offence; or
  - (b) the disclosure is authorised by the person to whom the information relates.
- ‘(3) In this section—

***chief executive (transport)*** means the chief executive of the department in which the *Transport Operations (Road Use Management) Act 1995* is administered.

***vehicle registry information*** means information kept in the register of registered vehicles under a regulation under the *Transport Operations (Road Use Management) Act 1995*.’.

**5 Insertion of new ch 9, pt 2A**

After section 463—

*insert—*

## **‘Part 2A                      Power of authorised persons to give directions about litter removal**

### **‘463A Direction to remove litter**

- ‘(1) An authorised person may give a person a direction under subsection (2) if—
- (a) the authorised person finds the person committing a relevant offence; or
  - (b) the authorised person—
    - (i) finds the person in circumstances that lead; or
    - (ii) has information that leads;  
the authorised person to reasonably suspect the person has just committed a relevant offence.
- ‘(2) The authorised person may direct the person to remove the litter that is the subject of the offence within a reasonable time after the person is given the direction.
- ‘(3) The direction may be given orally or by written notice.
- ‘(4) However, if the direction is given orally, the authorised person must, as soon as practicable, confirm the direction by written notice given to the person.
- ‘(5) The authorised person may impose reasonable conditions on the direction.
- ‘(6) In this section—
- relevant offence* means an offence against section 440D involving the deposit of more than 20L of litter.
- remove* includes collect, transport, store, treat or dispose.’.

### **6                      Insertion of new s 474A**

After section 474—

*insert—*

#### **‘474A Failure to comply with authorised person’s direction to remove litter**

- ‘(1) A person to whom a direction is given under section 463A must comply with the direction, including a condition of the direction, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—100 penalty units.

- ‘(2) The person does not commit an offence against subsection (1) if the person is not proved to have committed the relevant offence under section 463A.’.

### **7 Amendment of sch 3 (Dictionary)**

Schedule 3—

*insert—*

*‘deposit*, for chapter 8, part 3A, see section 440A.

*infringement notice* see the *State Penalties Enforcement Act 1999*, schedule 2.

*infringement notice offence* see the *State Penalties Enforcement Act 1999*, schedule 2.

*litter*, for chapter 8, part 3A, see section 440B.

*passenger declaration*, for chapter 8, part 3A, division 3, see section 440E.

*place*, for chapter 8, part 3A, see section 440A.

*prescribed person*, for chapter 8, part 3A, division 3, see section 440E.

*public passenger vehicle* see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

*registration Act* see the *State Penalties Enforcement Act 1999*, schedule 2.

*vehicle littering offence*, for chapter 8, part 3A, division 3, see section 440F.’.