

# **Environmental Protection Amendment Bill 2007**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is the *Environmental Protection Amendment Act 2007*.

#### **Reasons for the Bill**

Litter enforcement is undertaken by authorised persons in the Environmental Protection Agency, with powers delegated to an authorised person of a local government. Local government officers have raised concerns about the difficulty in enforcing the litter provisions, which are currently found under Part 2 of the *Environmental Protection (Waste Management) Regulation 2000*. The main difficulty is in enforcing littering offences involving a vehicle, including littering from a vehicle and illegal dumping (depositing 20 litres or more of litter).

Enforcement action for littering involving a vehicle is difficult and dangerous for the authorised person, as they are required to stop the vehicle and approach it to gather the details of the offender in order to issue the infringement notice to that offender.

This Bill provides amendments to the *Environmental Protection Act 1994* to provide safer and easier enforcement of littering offences involving a vehicle and to address several other issues that have been raised by local governments.

#### **Policy Objectives of the Legislation**

The policy objectives of the Bill are to amend the *Environmental Protection Act 1994* to:

- (1) help reduce the unlawful deposit of litter; and

- (2) introduce offences in relation to a littering from a vehicle and dangerous littering; and
- (3) allow, in particular circumstances, the offence of littering from a vehicle to be dealt with as an offence involving a vehicle under the *State Penalties Enforcement Act 1999*; and
- (4) allow an authorised person to direct a person to remove litter from a place if the person unlawfully deposited more than 20 litres of litter at the place.

The provision of strengthened and safer enforcement abilities for littering offences involving a vehicle has the potential to assist in reducing incidents of littering from vehicles. The ability for an authorised person to issue a clean up direction where 20 litres or more of litter has been dumped will also assist in reducing littering overall. Areas that have been littered, and where that litter remains, tend to attract more litter. Where this litter can be removed as quickly as possible will assist in maintaining a clean environment.

### **Achieving the Objectives**

The Bill implements the Government's decision to undertake litter prevention measures and enhance litter enforcement in Queensland by providing the ability for safer and easier litter enforcement by an authorised person.

### **Alternatives to the Bill**

There are no alternatives to the Bill. During the process of policy development, it became apparent that the scope of the proposed reforms was beyond what could be dealt with through subordinate legislation. The provisions are more appropriately placed in the *Environmental Protection Act 1994* not simply on the basis that Fundamental Legislative Principles may be overridden.

The additional offences are of some significance and will expand beyond the scope of power of the Environmental Protection Agency to local governments and other state government departments. By placing the provisions in the Act rather than in regulation this avoids any potential challenge on the basis of a lack of head of power under the present provisions of the Act.

Consequently, the Government in November 2006 authorised the development of a Bill to enable enhancements to litter enforcement and other matters relating to litter in Queensland.

### **Administrative cost and savings to Government**

There are likely to be some administrative and operational costs for the Queensland Government associated with implementation of the Bill. The degree of cost depends on the number of infringement notices that will be issued by an authorised person. For Government, as a guide, approximately 1.5 Fulltime Equivalent (FTEs) administration staff are needed for every 1000 Penalty Infringement Notices (PINs) issued by the Environmental Protection Agency. The time of the authorised officer, District Manager and Agency Litigation Unit is also required where PINs are contested. Approximately 4 percent are contested and 1 percent proceeds to Court.

Corporate Services Queensland will require additional support in order to process payment receipts for the additional litter PINs.

There are also likely to be some increased administrative and operational costs for local governments associated with implementing the Bill, in terms of search costs, administration and processing of the infringement notices. However, as local governments are able to retain the revenue raised from fine payments this should help defray some of these additional costs.

The new provisions provide for easier and safer enforcement of littering from vehicles. The littering provisions as they existed in the *Environmental Protection (Waste Management) Regulation 2000* required that an authorised person stop a vehicle from which a littering offence was observed in order to obtain the details of the litterer. The new provisions remove this element of risk to the officer by allowing an authorised person to issue the infringement notice to the registered owner of that vehicle.

Easier and safer enforcement of littering from vehicles will assist in reducing the amount of litter found along Queensland highways and roadsides. Over 40 percent of Queensland litter is found along highways and this imposes a considerable cleanup cost burden on state and local governments. Reduction in litter in these areas may allow the potential savings in cleanup costs to be redirected into other areas such as litter prevention awareness programs and appropriate litter bin infrastructure.

### **Consistency with Fundamental Legislative Principles**

Section 4 of the *Legislative Standards Act 1992* requires that legislation have sufficient regard to the rights and liberties of individuals.

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation:

- is consistent with principles of natural justice;
- does not reverse the onus of proof in criminal proceedings without adequate justification; or
- allows the delegation of administrative power only in appropriate cases and to appropriate persons.

Potential breaches of Fundamental Legislative Principles (FLPs) for the Bill are noted below.

### **Amendment to powers of an authorised person in relation to littering from a vehicle**

Division 3 of the Bill amends the *Environmental Protection Act 1994* to include littering offences involving a vehicle and provides the ability for an authorised person to issue the infringement notice to the registered operator of the vehicle. This creates a reverse onus of proof on the registered operator to prove that they were not the offender, rather than the authorised person having to prove that they were the offender.

Natural justice involves procedural fairness and a right to be heard, which has been addressed in the legislation by providing the ability for the registered operator of the vehicle to provide a declaration to the administering authority under the *State Penalties Enforcement Act 1999* in relation to the offence if they are not the actual offender. A person also has the right to elect to have the matter heard in Court.

In the case of littering from a vehicle (for instance, the tossing of a lit cigarette from a vehicle into dry grass or a glass bottle being thrown from a vehicle at a person) the possible greater environmental damage, as well as potential for property damage and personal injury, indicate there is a broader public interest in placing the responsibility on the owner of the vehicle in the first instance.

The difficulty and danger in approaching and attempting to stop a vehicle and the reluctance of authorised persons to enforce the current provisions provides another basis for justification in breaching FLPs.

The significant costs incurred by local governments and Queensland Government departments such as the Department of Main Roads for cleaning up litter along roadsides are also the basis for justifying any potential breach of natural justice where the registered owner is deemed to be the offender in the first instance.

A three-month amnesty period is proposed for littering offences involving a vehicle in order to ensure that as much awareness as possible of the changes can be delivered prior to infringement notices for this offence being issued. During this time, the registered operator of a vehicle will receive a warning and information regarding the new laws, as well as information about the impacts of litter.

### **Authorised person for the purposes of litter enforcement**

Section 445 of the *Environmental Protection Act 1994* requires that an authorised person be:

- an appropriately qualified public servant;
- an employee of the department; or
- a person included in a class of persons declared by regulation to be an approved class of persons for this section.

This addresses the FLP issue of allowing the delegation of administrative power only in appropriate cases and to appropriate persons. Training will also ensure that an authorised person has suitable information in order to enforce the provisions appropriately.

### **Direction to remove litter**

Part 2A of the Bill inserts a new section 463A into the *Environmental Protection Act 1994*. The section declares that an authorised person may direct a person, through written notice, to remove the waste that has been unlawfully deposited if they find a person committing an offence or they have reasonable grounds to believe that person has committed the offence of depositing more than 20 litres of waste.

This section is necessary in order to ensure that the person responsible for the offence also removes the material, without creating a cost burden to the administering authority. Any potential breach of natural justice by this section can be mitigated by attaching the clean up direction notice to the original infringement notice offence.

If the person makes a declaration stating that they were not the offender and nominates the actual offender, the clean up direction is reissued with the new infringement notice to the nominated person. This means that the registered operator of a vehicle does not have liability for an offence they did not commit.

## **Consultation**

For around 10 years there has been considerable discussion regarding the enforcement of littering offences by an authorised person. The *Litter Act 1971* and associated regulation were repealed in 2000 with the introduction of the *Environmental Protection (Waste Management) Regulation 2000*. Extensive stakeholder consultation was undertaken at this time.

Local governments have since requested enhanced litter enforcement provisions as the provisions in the Regulation are difficult to enforce and do not provide the same degree of enforcement power that an authorised person previously had under the *Litter Act 1971*.

Provisions in the *Litter Act 1971* deemed the driver or person in charge of the vehicle at the time of the offence to be the person who committed the offence if the authorised officer was unable to establish who committed the offence.

Local governments were consulted on the amendments as enforcement responsibilities are delegated to local government authorised persons. Local governments and associations consulted were:

- Local Government Association of Queensland
- Brisbane City Council
- Gold Coast City Council
- Ipswich City Council
- Toowoomba City Council
- Rockhampton City Council
- Mackay City Council
- Townsville City Council
- Cairns City Council
- Central Queensland Local Government Association
- North Queensland Local Government Association

A communication kit has been prepared to assist local governments in communicating the changes to the broader community. The kit also contains a litter enforcement manual that provides information for authorised persons regarding appropriate enforcement of littering offences.

State government departments were consulted on the amendments through an Interdepartmental Advisory Committee (IDAC) and as part of the

Cabinet process in developing the Bill. The departments involved in the IDAC process were:

- Department of the Premier and Cabinet
- Treasury Department
- Department of Justice and Attorney-General
- State Penalties Enforcement Registry
- Department of Transport
- Maritime Safety Queensland
- Department of Local Government, Planning, Sport and Recreation
- Department of Main Roads
- Queensland Police Service
- Department of Primary Industries and Fisheries
- Department of Emergency Services
- Department of Health
- Department of State Development
- Department of Tourism, Fair Trading and Wine Industry Development

Feedback provided through the IDAC process was considered and the provisions of the Bill were amended to ensure that the issues of the various Departments were addressed.

No widespread public consultation was undertaken for the amendments however, the changes to the legislation were communicated to impacted stakeholders including rental car and taxi companies. Rental car and taxi companies, as the registered owner of a vehicle, will receive the infringement notice in the first instance.

Organisations such as Keep Australia Beautiful and the RACQ will be involved in communicating the changes to the way littering from vehicles is enforced. Communication materials have been prepared for the use of local governments and other organisations to raise awareness of the community and their members and clients regarding the changes. The communication material and an overview of the changes will be provided during the three-month amnesty period.

## **Training**

The Bill makes significant changes to the way that littering from a vehicle can be enforced. Authorised person training will be conducted during the amnesty period. Information will be provided to the authorised person in relation to the changes to the legislation, evidence gathering and reporting, reasonableness of issuing an infringement notice for particular littering offences and case studies and examples of appropriate use of infringement notices for certain offences.

## **Notes on Provisions**

### **Part 1                      Preliminary**

#### **Short title**

Clause 1 states that the short title of the Act is the *Environmental Protection Amendment Act 2007*.

#### **Commencement**

Clause 2 provides for the Act to commence on a day to be fixed by proclamation.

#### **Act amended**

Clause 3 states that the Act amended is the *Environmental Protection Act 1994*.

### **Part 2                      Amendment Of *Environmental Protection Act 1994***

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

Clause 4 provides for the insertion of a new part under **Chapter 8 – General environmental offences** of the *Environmental Protection Act*



1994. After s440, part 3A will provide for offences relating to depositing litter.

## **Part 3A                      Offences relating to depositing litter**

### **Division 1                      Preliminary**

#### **440A Definition for pt 3A**

This section provides a definition for *deposit, litter and place* in relation to part 3A – **Offences relating to depositing litter**.

All definitions must only be interpreted in the context of this part. Terms not defined here have either the meaning given to them by the *Acts Interpretation Act* or by a Standard English Dictionary.

In this part, to *deposit* litter means –

- (a) throw, drop or otherwise put litter on the place; or
- (b) leave 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 in relation to 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 a road; or
- (b) leaves the litter on private land where it is then washed by rain into the road.

Section 440A(b) allows for the enforcement of litter items such as dog faeces, for instance on a footpath or beach, if the person responsible for the dog leaves the litter (the dog faeces) at the place and does not remove the material. This is also applicable to items that may fall off the back of a trailer. In both these circumstances, the offence is created if the person leaves the material at the place. If the person picks up the material and places it back on the trailer or in a bin, no littering offence has occurred.

**Litter** is defined in section 440B.

**Place** includes premises and a place, including a public place, on land. Under schedule 3 of the *Environmental Protection Act 1994*, **land** is defined to include waters. **Land** also includes the airspace above land; and land that is, or is at any time, covered by waters.

This means that the unlawful deposit of litter is not restricted to terrestrial places and an authorised person may issue an infringement notice for a littering offence occurring on water or where the litter is thrown from the bank of a river into the water.

Under schedule 3 of the *Environmental Protection Act 1994*, **premises** is defined to include a building or structure or part of a building or structure, as well as the land on which a building or structure is situated.

This means that the offence of littering need not be restricted to an open outdoor space. A person may commit a littering offence if they throw litter on the ground at a football stadium and fail to deposit it in a bin when they leave. The offence of depositing litter links to the exceptions under section 440C for when the deposit of litter at a place is unlawful.

#### **440B Meaning of litter**

This section provides a definition of litter.

*Subsection 1* states that **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
- (c) an abandoned vehicle or an abandoned part of a vehicle.

Examples for paragraph (b) include –

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

These examples do not limit the application of the litter definition from applying to other items that an authorised person may reasonably believe to be litter, including cigarette butts, old mattresses and furniture, takeaway food containers, household rubbish and discarded whitegoods.

*Subsection 2* states that the definition of **litter** does not include any gas, dust or smoke that is emitted or produced –

- (a) during, or as a result of, the normal operations of any industry; or

- (b) from machinery used for domestic purposes.

For example, dust generated during the mowing of a footpath or from a construction site during normal building operations does not constitute a littering offence. Some of these actions may, however, constitute an offence under other legislation or breach licence or approval conditions for that particular activity.

## **Division 2            General offences**

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

This section provides circumstances, for part 3A, where the deposit of litter is not considered to be unlawful. A definition of *occupier* is also provided.

*Subsection 1* provides, for the purposes of this part, exemptions from the unlawful deposit of litter.

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 in a litter bin or other container provided by an occupier of the place for the purpose of depositing litter.

Section 440C only applies in relation to the enforcement of littering offences under part 3A of the *Environmental Protection Act 1994*. For local governments, this will not affect the operation of a local law in relation to unsightly accumulation, as the scope of the defence in s440D is confined to application under this part, not in relation to other regulatory instruments.

For example, if an authorised person were to issue an infringement notice for littering to the occupier of a place and the occupier had deposited the material, that infringement notice would not be valid. However, this section does not preclude the authorised person from using the local law provisions in relation to an unsightly accumulation.

*Subsection 2* provides the definition of occupier for subsection 1.

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

For example, in relation to local government hard waste collection days, where householders place items on the footpath for collection under the direction of the local government, the local government would be the occupier as they are the person who exercises control in relation to the place (the footpath). This allows a person to legitimately place items on the footpath during a local government hard waste collection without those items being considered as litter while the collection service is being conducted.

It also allows a local government authorised person to take action if a person deposits materials for collection that the local government has advised cannot be removed through the provision of that service or if the person fails to remove that material from the footpath after the collections are completed, as the person has now deposited litter without the consent of the occupier.

#### **440D Depositing litter**

This section provides the littering offences.

*Subsection 1* states that a person must not unlawfully deposit litter at a place unless that person has a reasonable excuse. A range of offences and maximum penalties are provided in subsection 1 for:

- (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;
- (c) if the offence involves depositing litter from a vehicle – 30 penalty units; or
- (d) otherwise – maximum penalty 20 penalty units.

*Subsection 2* defines ***dangerous littering*** for this section –

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

Examples provided of ***dangerous littering*** include –

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

These examples do not restrict the application of a dangerous littering offence to other actions, including leaving a hypodermic needle in a garden

bed or near a children's playground, or throwing an item from a car at another road user or pedestrian.

The offence of *depositing litter from a vehicle* may involve:

- a person throwing a soft drink can, takeaway food packaging or plastic bag from a car window; or
- items falling off the back of a ute or a trailer as a result of an uncovered load; or
- waste falling out of a skip bin or from a waste collection truck; or
- a person throwing a cigarette butt on the ground, then getting into a vehicle and driving away.

An offence involving *other littering* may include the littering of small items such as straws, ATM receipts and bus tickets, takeaway food and drink containers, cigarette packets, cigarette butts and chewing gum.

In some circumstances, a littering offence may initially appear to be both littering from a vehicle and dangerous littering, for example, in the case where an authorised person observes a glass bottle being thrown from a car window and shattering on the road.

In these cases, only one infringement notice may be issued for the offence and this should be for the offence that is most easily proven. While broken glass itself poses a danger, for a number of reasons it may be difficult to prove that it is dangerous littering. However, it is more easily proven that the bottle was littered from a vehicle, as the authorised person observed the action of the bottle being thrown from the vehicle.

## **Division 3            Vehicle littering offences**

### **440E Definition for div 3**

This section provides definitions for *passenger declaration*, *prescribed person* and *vehicle littering offence* for division 3.

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

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

In this division, a *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 user declaration under the *State Penalties Enforcement Act 1999* in relation to the offence.

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

This means that a vehicle littering offence may involve a person littering an item directly from a vehicle or depositing litter on the footpath and getting into a vehicle.

### **440F Application of div 3**

The section provides the application of division 3 in relation to a vehicle littering offence.

*Subsection 1* states that this division applies to an offence against 440D that is a vehicle littering offence.

*Subsection 2* states that 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 the Act applies.

*Subsection 3* states that the vehicle is associated with the commission of the offence 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.

Subsection 3 allows an authorised person to use the registration details of the vehicle for enforcement of the littering offence where the authorised person has observed a person deposit litter then get into a vehicle and drive away (either as a driver or passenger) ***and*** there is a link between the vehicle as the identifier for issuing the infringement notice and the person

dropping the litter. It is important in this instance that the authorised person has observed the littering offence in relation to a person leaving or arriving in the vehicle.

For example, if an authorised person saw rubbish in an area and saw a vehicle leaving that area, an infringement notice must not be issued based on the assumption that the occupants of that vehicle left the litter at the place.

*Subsection 4* states that 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.

This means that if a passenger on a bus throws litter out of the bus window, there has been no offence involving a vehicle. However, if the driver throws litter from the bus window, an offence for the purposes of this division has been committed.

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

This section provides for the application of the *State Penalties Enforcement Act 1999*.

*Subsection 1* states that for the *State Penalties Enforcement Act 1999*, a vehicle littering offence is an offence involving a vehicle as defined under that Act.

*Subsection 2* states that 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.

*Subsection 3* states that 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.

*Subsection 4* states that if the person gives a passenger declaration for the offence, another person may not give a SPEA declaration or a passenger declaration for the same offence.

*Subsection 5* states that in this section a 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**

The section provides the effect of a passenger declaration in relation to a vehicle littering offence and provides definitions for this section for administering authority and relevant time and date.

*Subsection 1* states that 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.

*Subsection 2* states that the *State Penalties Enforcement Act 1999*, section 17 (Liability for infringement notice offences involving vehicles) 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.

*Subsection 3* states that a proceeding for the offence may be started against the passenger only if a copy of the declaration has been served on the passenger.

*Subsection 4* states that 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.

This means that the declaration may be used in Court should the person elect to have the matter heard in Court. The declaration provides the authorised person with the reasonable belief that the person named in the passenger declaration committed the offence.

*Subsection 5* states that 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.

*Subsection 6* states that, in this section –



**administering authority** for the infringement notice means the administering authority under the *State Penalties Enforcement Act 1999*.

In this section **relevant time and date** for a vehicle littering offence means the time and date specified in the infringement notice as the time and date of the offence.

Under the *State Penalties Enforcement Act 1999*, section 7, the administering authority for an infringement notice offence that is an offence against a provision of the *Environmental Protection Act 1994*, or an infringement notice about the offence, is –

- (a) for an infringement notice served by an employee of a local government, the local government; or
- (b) otherwise, the agency within which the provision is administered.

#### **440I Service of infringement notice for vehicle littering offences**

This section provides information in relation to the service of an infringement notice for a vehicle littering offence.

*Subsection 1* states that an infringement notice for a vehicle littering offence may be served on the person named in the passenger declaration as the person who deposited the litter.

*Subsection 2* states that 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.

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

The section provides a duty of disclosure for the Chief executive (transport) in relation to a vehicle littering offence.

*Subsection 1* states that 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.

*Subsection 2* states that 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 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 disclosure is authorised by the person to whom the information relates.

*Subsection 3* provides definitions for this section.

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.

In this section, ***vehicle registry information*** means information kept in the register of registered vehicles under the *Transport Operations (Road Use Management – Vehicle registration) Regulation 1999*, section 15.

## **Insertion of new Ch 9, pt 2A**

Clause 5 provides for the insertion of a new part under Chapter 9 – Investigation and enforcement. After s463, the new part 2A will provide for authorised persons to give directions about the removal of more than 20 litres of litter (illegal dumping).

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

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

This section provides an authorised person with the power to direct a person to remove litter, where the litter that has been unlawfully deposited

is 20 litres or more. This section also contains definitions for *relevant offence* and *remove*.

*Subsection 1* states that 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 a 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.

*Subsection 2* states the authorised person may direct the person to remove the litter that is subject to the offence within a reasonable time after the person is given the direction.

*Subsection 3* states that the direction may be given either orally or by written notice.

*Subsection 4* states that, if the direction is given orally, the authorised person must confirm the oral direction by a written notice given to the person as soon as possible.

*Subsection 5* provides for the authorised person to impose reasonable conditions on the direction.

*Subsection 6* states that in this section –

***relevant offence*** means an offence against section 440D involving the deposit of more than 20 litres of litter.

***remove*** includes collect, transport, store, treat or dispose.

### **Insertion of new s474A**

Clause 6 amends s474 of the *Environmental Protection Act 1994* to provide a section after s474 in regard to the failure of a person to comply with an authorised person's direction to remove the litter that has been deposited.

### **474A Failure to comply with authorised person's direction to clean up litter**

*Subsection 1* states that a person to whom a direction is given under section 463A (Direction to remove litter) must comply with the direction, including a condition of the direction, unless the person has a reasonable excuse for not complying with it. The maximum penalty for not complying with the direction is 100 penalty units.

*Subsection 2* states that 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.

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

Clause 7 amends the Dictionary to provide definitions for terms used in **Part 3A – Offences relating to depositing litter**.

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

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

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

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

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

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

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

*public passenger vehicle*, see *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.