



## Explanatory Note Litter Bill – Consultation Draft – June 2006

This document provides brief explanations of the main provisions in the draft of the *Litter Bill 2006* provided for consultation. It is not a complete explanation and is meant to be read in conjunction with the draft Bill.

### **Background and purpose of the new legislation**

The draft Bill was prepared following a review of the *Litter Act 1973* conducted in consultation with stakeholder groups and the public. An Issues and Options Paper, *Litter Management in Tasmania – Legislative Reform*, was released in June 2004.

Improved control and prevention of littering is important to enhance Tasmania's natural and urban environments, its "clean and green" image and its attractiveness for tourism. The new legislation will replace the current Litter Act with contemporary, more effective litter management measures similar to recent litter legislation in Victoria, NSW and the ACT.

### **Administration of the new legislation**

The new litter legislation will be formally administered by the Department of Tourism, Arts and the Environment (DTAE). The Environment Division of DTAE will administer the proposed Litter Hotline (see below) and the Litter Management Fund (clause 39) and arrange public litter education and information.

The new legislation will enable officers from various agencies and councils to be

authorised and these agencies and councils will be responsible for day-to-day litter enforcement in their areas of responsibility. The Environment Division will consult with these agencies and councils to co-ordinate introduction of the new legislation and its administration.

### **Authorised officers (clauses 6, 7, 35 - 38)**

Authorised officers will have a major role in operating the new litter legislation. They will serve infringement notices for littering offences and litter abatement notices which can require action to be taken to address littering problems. To assist them in enforcing the legislation and gathering evidence, they will have powers to enter and inspect places and require persons to provide names and addresses (clauses 35 - 37).

Authorised officers will be:

- officers and employees of government agencies appointed by the Secretary of the DTAE. It is envisaged that these officers would include officers from the Environment Division of DTAE and from government agencies with land management roles;
- police officers;
- council employees appointed by a council; and
- other persons appointed by the Secretary of DTAE (in case there is need for authorised officers from another source).

### **Infringement notices (clauses 8 – 15)**

The new legislation will be enforced primarily through the service of litter infringement notices for litter offences. These notices will operate in a similar way to traffic infringement notices, with the matter proceeding to court if the recipient does not pay the penalty imposed within 21 days (or an extension of this period).

The *Monetary Penalties Enforcement Act 2005* (MPEA) will provide new requirements for infringement notices and their enforcement. When the MPEA commences (which is not expected until after the new litter legislation comes into force), its provisions will apply to litter infringement notices and the above clauses (which have been inserted as a temporary measure) will be repealed.

### **Litter offences (clauses 16 and 17)**

Increased penalties for littering are proposed, divided into 3 levels depending on the amount littered as summarised in the following table.

<b>Level</b>	<b>Amount</b>	<b>Infringement notice penalty</b>	<b>Maximum court penalty</b>
1	Small items (eg. cigarette, bus ticket) – clause 17.	1 penalty unit – ie. \$100.	2 penalty units
2	Amounts of 55 litres or less in volume – clause 16.	2 penalty units (individual); 4 penalty units (corporation)	20 penalty units
3	More than 55 litres in volume – clause 16.	5 penalty units; 10 penalty units (corporation)	50 penalty units

Fifty-five litres (the volume of a green garbage bag) has been chosen to distinguish between levels 2 and 3, as it is a commonly recognised amount. There are two subclauses for each offence in clause 16 in order to distinguish between the level 2 and 3 offences. The penalties are indicated below each offence. The term “expiation fee” refers to the infringement notice penalty and the level is shown in Schedule 1. One penalty unit is currently \$100.

It will also be an offence to overload public litter bins or other receptacles and to deposit commercial and household garbage in these receptacles (unless they are marked for this purpose) – see clauses 16(5), (6) and (7).

The offence of depositing litter includes putting materials in such a location that they escape or are likely to escape – see clause 3, definition of “deposit”, paragraphs (c) and (d). This offence would cover situations such as unsecured material on construction sites, at shopping complexes and on vehicle trailers.

It will not be an offence for an owner or occupier to deposit litter on their land or for litter to be deposited with the consent of the owner or occupier – see clauses 16(1)(b) and (2)(b). However, it will be an offence if this is done in such a way that litter escapes or is likely to escape – see clauses 16(3) and (4).

### **Liability for littering – motor vehicles (clause 18)**

The registered operator of a motor vehicle will be liable for littering from that vehicle. To guard against unfairness, that person will not be liable for the offence if the vehicle was stolen or being unlawfully used at the time, or if, by way of a statutory declaration, he or she can identify that they were not the driver or that another person committed the offence. This provision is important for the success of the Litter Hotline, where most littering reports are expected to be littering from motor vehicles – see below.

### **Liability for littering – multiple tenancies (clause 19)**

On multiple tenancy premises, the person or corporation responsible for overall management of the place will be liable for littering if the identity of the offender cannot be immediately established. To guard against unfairness, the person deemed liable will be able to identify the litterer (if known) by statutory declaration. They will also have a defence that they took all reasonable action to prevent the offence or could not reasonably have

prevented it. One purpose of this provision is to encourage managers of multiple tenancies to make adequate provision for rubbish disposal and to keep premises free from litter.

### **Unsolicited documents and advertising material (clauses 20 – 26)**

In order to prevent unsolicited documents (eg. advertising catalogues, leaflets) from becoming litter, it will be an offence to:

- deliver such material to premises unless it is placed securely in a mail receptacle or other secure place. Exceptions are made for newspapers, documents delivered under legislation and large documents such as telephone books;
- to place such material on vehicles, unless it is deposited according to law (eg. a parking infringement notice) – clause 22;
- to put any document on a fixed structure (eg. a building, pole) without the express consent of the owner, occupier or manager (as appropriate) – clause 23.

To assist in identifying offenders, advertisers and distributors will have to provide details of persons responsible for delivering documents and will have a duty to ensure that documents are delivered in a way that prevents them becoming litter – clauses 24 – 26.

### **The Litter Hotline - public reporting of littering – clauses 27 and 28.**

These clauses facilitate the prosecution of a littering offence on the basis of a report by a member of the public.

The Litter Hotline will be established by the Environment Division and operate throughout the State. It is primarily aimed at littering offences from motor vehicles. These comprise a high percentage of littering, but offences are infrequently prosecuted because they are not often witnessed by an authorised officer.

Members of the public will be able to report littering offences either through a telephone hotline (in which case they will

be sent a report form to complete) or through a report form on the internet. The system will be based on a Victorian system which has operated successfully for several years. There will be safeguards against malicious or vexatious reporting, as follows:

- people making reports must identify themselves and agree to attend court if necessary;
- provision of false or misleading information will be an indictable offence;
- registered operators of motor vehicles who receive infringement notices as a result of a public report will be able to complete statutory declarations if they were not the offender – see clause 18.

### **Court orders to remove litter (clause 30)**

A court may order litter offenders to clear away and remove the litter they deposited or any other litter, instead of or in addition to a monetary penalty. If the offender fails to take this action, the court may order them to pay the costs of removal to the person or body responsible for controlling or managing the land.

### **Abatement notices (clauses 31 – 34)**

Litter abatement notices are intended to be flexible instruments which can be issued by authorised officers to address a range of littering problems – eg. an ongoing source of littering from commercial premises or construction sites. A notice will be able to require the offender to remove the litter. Failure to comply with a notice will be an offence with a penalty of 8 penalty units for an individual or 16 penalty units for a corporation. The relevant authority can recover the costs of litter removal should the offender fail to comply - clause 34.

The recipient of a litter abatement notice would be able to make an appeal to the Magistrates Court (Administrative Appeals Division). A similar appeal arrangement exists in other jurisdictions with abatement notices or their equivalent.

### **Litter Management Fund (clause 39)**

It is proposed that penalty money received in relation to a litter offence (except where proceedings are taken by a council) will be used to fund litter control and prevention. Penalty funds would be paid into a trust account within the government's Special Deposits and Trust Fund. This fund would be used to operate the Litter Hotline, and assist in administering the new Litter Act and in funding litter information and education.

Councils would receive penalty money from litter offences which they prosecute.

### **FURTHER INFORMATION**

For more information, contact the Environment Division, telephone (03) 6233 6518.