



**LITTER
MANAGEMENT
IN TASMANIA**

**LEGISLATIVE
REFORM**

**ISSUES
& OPTIONS
PAPER**

JUNE 2004



**DEPARTMENT OF PRIMARY INDUSTRIES
WATER AND ENVIRONMENT**

LITTER MANAGEMENT IN TASMANIA

LEGISLATIVE REFORM

ISSUES AND OPTIONS PAPER

June 2004

**Environment Division
Department of Primary Industries, Water and Environment
GPO Box 44, HOBART TAS 7001**

PUBLIC COMMENT PROCESS

The purpose of this review is to identify the changes required to legislation regarding litter management in Tasmania and investigate the extent to which the *Litter Act 1973* can be modernised and made most effective.

Written submissions in relation to this Issues and Options Paper are invited from interested parties.

Submissions should be forwarded to:

Ms Maree Bakker
Waste Management Section
Environment Division
Department of Primary Industries, Water and Environment
GPO Box 44
HOBART TAS 7001

Alternatively, submissions may be hand delivered to 7th Floor, 134 Macquarie Street, Hobart.

Submissions will be received until Monday, 2 August 2004.

If you have any queries about this paper, please contact Ms Bakker at the above address or by telephone, facsimile or email:

Telephone: (03) 62336599

Fascimile: (03) 62333800

Email: Maree.Bakker@dpiwe.tas.gov.au.

Further Copies of the Discussion Paper may be obtained from www.dpiwe.tas.gov.au/env under the Hot Topics section or by telephoning Ms Tammy Miller on (03) 62336518.

Please note

- Respondents are advised that the contents of submissions will not be treated as confidential unless they are marked 'confidential' and they are capable of being classified as such in accordance with the *Freedom of Information Act 1991*.
- Disclaimer: Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith but on the basis that the Department of Primary Industries, Water and Environment, its agents and employees are not liable (whether by reason of negligence, lack of care or otherwise) to any person for any damage or loss whatsoever which has occurred or may occur in relation to that person taking or not taking (as the case may be) action in respect of any representation, statement, opinion or advice referred to herein.
- This public consultation is not intended to be an opportunity to raise personal grievances about individual litter sources.
- This document may be freely copied and distributed.

The cover and text of this document are printed on 100% recycled paper.

FOREWORD

As Tasmanians we are justly proud of our international reputation for a clean environment and pristine wilderness areas. This is part of the natural advantage that we take for granted but which is so attractive to tourists and those buying the products we produce. However, this natural advantage is fragile and can easily be degraded if we do not look after it.

Litter is one of the most visible signs of environmental pollution and can quickly leave an unfavourable impression with tourists. Our society has become increasingly aware of environmental issues and for most of us any level of littering is unacceptable as it prevents a full enjoyment of the Tasmanian environment by visitors and those of us who live here.

Litter imposes environmental, economic and social costs on the community, affecting not only the environmental and natural values, visual and physical amenity of an area, but also threatening the safety of other users of that area and our wildlife.

Most Tasmanians are litter aware and generally dispose of their waste appropriately. However, not everyone does the right thing and litter remains visible on our roads and highways, in picnic areas, on beaches, in waterways and in urban areas.

This Issues and Options Paper aims to identify the changes required to legislation regarding littering in Tasmania. The current *Litter Act 1973* was enacted 31 years ago, and during this time there have been a number of lessons learned and new approaches tried in other states and countries. It is now time to update the 1973 Act and to introduce a number of new tools and approaches, some of which are used in other jurisdictions. It is important that we have contemporary legislation to underpin a broader approach to litter management and ensure that there are appropriate penalties and sanctions for those who persist in littering.

Addressing the management of litter will assist in attaining several of the goals outlined in the Tasmania *Together* vision, including the reduction of air and water pollution and the enhancement of our 'clean and green' image.

Of course there are many other factors, such as education and the provision and servicing of appropriately placed infrastructure which have a bearing on the management of litter in Tasmania. It will be important to maintain a multi-faceted approach to the litter problem.

This paper has been developed to provide a basis for public consultation on the review of the *Litter Act 1973*. I encourage you to consider the issues raised in this Issues and Options Paper and contribute to the development of effective legislation by providing written comments.



Judy Jackson

MINISTER FOR ENVIRONMENT AND PLANNING

EXECUTIVE SUMMARY

This Issues and Options Paper marks a step in the development of a new legislative approach to litter control in Tasmania.

Tasmania is known for its pristine wilderness and picturesque environment. The image of Tasmania is tainted if people see litter scattered around the urban, rural and natural environments. Litter control is beneficial to the well-being of all Tasmanians. Inadequate disposal of litter can have an impact on terrestrial and marine animals, and be costly for local government to remedy.

Tasmania has litter legislation (the *Litter Act 1973*) but it is now 31 years old and is in need of review to ensure that it reflects contemporary approaches to litter management. The overall objective of reviewing the legislative framework for litter management is to reduce the incidence of littering and to reduce the amount of litter in public places and the broader environment.

This Paper reviews the impediments to effective litter control that currently exist in the legislation in Tasmania, and canvasses possible legislative options to deal with these issues.

The options canvassed include:

- altering the definitions of litter, land and littering
- changing the type and range of offences to increase the fines for littering
- grading penalties according to the severity of offences,
- restricting the way that advertising material is placed
- making it an offence to place household or commercial waste in litter bins
- making it a separate offence to cast a lit cigarette butt
- requiring the covering of certain loads of material in transit

Other options for consideration include restricting the large scale release of balloons, regulating plastic bag use and the concept of land and product stewardship.

Possible changes to the methods of enforcement are also discussed. These include

- the ability to issue litter abatement notices
- the capacity to successfully prove an offence by tracing evidence,
- the capacity to issue littering infringements to registered operators of vehicles as a default; and
- an enhanced capacity for a member of the public to report an offence to an authority.

In developing these options, approaches have been drawn from other states and countries that have modernised and upgraded their own legislation in the last few years.

There are several options for implementing statutory change, and the key features of these options are described. The favoured option is to replace the *Litter Act 1973* with new legislation.

There are also many non-legislative ways to approach the litter problem, including improving the provision and servicing of infrastructure and raising public awareness. An exploration of these mechanisms is outside the scope of this paper.

This paper has been developed to provide a basis for public consultation on the features that should be included in new litter legislation for Tasmania. State and local government, industry and the wider community are invited to provide comment on this paper. Comments can be made by providing a detailed written submission or by completing and posting the last page of this paper.

TABLE OF CONTENTS

	Page No.
PUBLIC COMMENT PROCESS	ii
FOREWORD	iii
EXECUTIVE SUMMARY	iv
TABLE OF CONTENTS	v
1. INTRODUCTION	2
1.1 The problem – And why manage it?	2
1.2 Who litters – and Why?	3
2. SCOPE OF THIS REVIEW	4
3. THE CURRENT APPROACH	4
4. WHY CHANGE THE STATUTES?	5
5. OPTIONS FOR STATUTORY CHANGE	6
5.1 Definitions	6
5.1.1 <i>An altered definition of litter</i>	6
5.1.2 <i>Discrimination between different types of littering</i>	7
5.1.3 <i>Providing a definition of “depositing”</i>	8
5.2 Changing the type and range of offences	8
5.2.1 <i>Increasing the fines for littering, grading of penalties for different offences</i>	8
5.2.2 <i>Fines for disposing of household or commercial waste in litter bins</i>	9
5.2.3 <i>Fines for vandalising litter bins</i>	9
5.2.4 <i>Fines for casting a lit cigarette butt</i>	10
5.2.5 <i>Restricting bill posting</i>	10
5.2.6 <i>Provisions in relation to the distribution and placement of advertising material</i>	12
5.2.7 <i>Regulation on the covering of loads of material which can potentially become litter</i>	12
5.2.8 <i>Restricting the large scale release of balloons</i>	13
5.3 Methods of Enforcement	14
5.3.1 <i>Litter Infringement Notices (“On the Spot Fines”)</i>	14
5.3.2 <i>Litter Abatement Notices</i>	14
5.3.3 <i>Evidence required to prove an offence</i>	15
5.3.4 <i>Powers of authorised officers to collect evidence</i>	16
5.3.5 <i>Littering offences automatically issued to registered operators of vehicles</i>	17
5.3.6 <i>The provision for public reporting of a littering offence to an authority</i>	17
5.4 Issues outside the Scope of the Review	18
5.4.1 <i>Plastic bags</i>	18
5.4.2 <i>Land stewardship</i>	19
5.4.3 <i>Product stewardship</i>	19
6. STATUTORY INSTRUMENTS	21
REFERENCES	22
QUICK AND EASY RESPONSE PAGE	25

1. INTRODUCTION

Litter arises from various sources and appears in many forms, including discarded food and beverage wrappers and containers, cigarette butts, dead leaves and garden refuse, wind blown industrial waste, illegally dumped household items and cars. Frequently littered items include single use/ immediate disposal items designed to be portable. Cigarette butts generally constitute the majority of litter items, by count, sampled in litter surveys (approx. 50-58%), however a significant percentage of the litter stream also arises from the inappropriate disposal of packaging and containers for food and beverages. Often litter items are made from durable materials that are easily transported by wind and rain. Prevalent sources of roadside litter appear to be items such as packaging materials thrown from vehicles, waste dumped on roadside verges by individuals, or lost loads from unsecured commercial or private vehicles or trailers whilst in transit.

Litter accumulates in frequently used areas such as shopping areas, industrial or building sites and school precincts. Other areas include recreational areas and public places such as our parks, beaches, waterways and scenic areas. Given Tasmania's efforts to draw tourists to the State, litter control is a topical issue. Local newspapers often include letters from interstate tourists, or their hosts who are upset about roadside litter. Research indicates that parks and malls in Hobart and surrounding beaches are proportionally more littered than those in Darwin, Adelaide, Sydney and Perth.

Suggested measures to address this issue range from more community education, and better disposal facilities to rigorous enforcement of penalties for littering. Whilst each of these solutions is important in its own right, no one of them can succeed alone, and it could be argued that the long term effectiveness of each depends on the effective implementation of the others.

This Issues and Options Paper aims to identify possible changes to legislation regarding litter in Tasmania, in order to make it more contemporary and more effective. Legislation is an important element of an overall litter reduction strategy. The current legislation, the *Litter Act 1973*, is now 31 years old and a review of its provisions and effectiveness is required.

1.1 The Problem – And Why Manage It?

Tasmania is known internationally for its clean environment and wilderness areas. It is a deserved reputation, however it is incumbent on all Tasmanians to contribute actively to the protection of our environment. Our environment constantly needs our attention if we are to maintain our natural advantage.

Litter, being one of the most visible signs of environmental pollution, should be a concern for all Tasmanians. With society's increased awareness of environmental issues and appreciation for our natural environment, any level of littering is unacceptable, as it prevents a full enjoyment of the Tasmanian environment. This is borne out by community surveys on littering, which indicate that a large proportion of the community believes littering to represent a considerable problem in our society. Litter imposes environmental, economic and social costs on the community, affecting not only the environmental and natural values, visual and physical amenity of an area, but also threatening the safety of other users of that area and our wildlife.

Most Tasmanians are litter aware and generally dispose of their waste appropriately. However litter is evident on our roads and highways, beaches, waterways, picnic areas, urban areas and even in our wilderness. Specific measures are needed to reinforce a "litter prevention" focus rather than "litter collection" focus.

Litter management, like most waste management issues, is a complex environmental and civic issue for which the whole of the community should take responsibility. Littering behaviour is heavily influenced by cultural and social factors, and it is often the case that littering is not just the result of

isolated, irresponsible practices by individuals. The propensity to litter is often influenced by a combination of factors such as a lack of knowledge of impacts, inadequate disposal facilities, marketing pressures and ineffective enforcement provisions.

1.2 Who litters – and Why?

In 1997 the Beverage Industry Environment Council (BIEC) commissioned Community Change Pty Ltd to undertake the largest national study of littering behaviour conducted anywhere in the world at the time. Further litter related studies have subsequently been undertaken by Community Change. The 1997 study used a combination of attitudinal survey information and actual field observations of social behaviour. Ten sites were studied in Tasmania, including popular recreation areas (Constitution Dock, Salamanca Park, Mt Nelson lookout), shopping areas (Liverpool and Murray Streets and the Elizabeth Street Mall), transport and transit areas (the Elizabeth Street bus mall), beach areas (Kingston) and public areas (Franklin Square).

No single type of person typifies a “litterer”. Field surveys have found that people in the 15-24 age bracket are well represented among those who are perceived as litterers. It may be that young people spend more time in public places (compared to other age groups). They are often the target of intense marketing campaigns for many of those products that are highly represented in the litter stream.

In the Tasmanian component of the study, the following age to littering relationship was found:

AGE BRACKET	% OF THE PEOPLE OBSERVED LITTERING
<15 years	1
15-24	45
25-34	15
35-44	15
45-54	14
>54	10

In that study, although “water pollution” and “loss of forests” were seen to be the most important environmental issues in Tasmania, 78% of people surveyed also felt that littering was a “very” or “extremely” important issue. Of those surveyed, 81% said that it was “never” acceptable to litter: 51% of people thought that Hobart was “less-littered” than other Australian cities.

The most common reasons for littering amongst those surveyed were given as “too lazy” – 24%, “no ashtray” – 23%, “no bin” – 21%, “It’s a habit or don’t know” – 12%. Those interviewed suggested that “improved bins” (i.e. more bins or bins that were cleared more often), “community education programs” and “fines” would be the best ways to stop people from littering.

The types of litter most prevalent in the study were cigarettes (by far the majority of litter items discarded by count), food wrappers and containers and paper products.

The study identified a number of behaviours associated with littering, such as wedging the litter into a small space where it could not be easily seen (e.g. behind a seat), burying disposable items under sand or leaves, and “foul-shooting” (aiming for the bin but missing and failing to retrieve or properly put the item in a bin). Many people were not consciously aware of having littered. Other subjects in the study preferentially binned some items such as food wrapper and beverage containers while littering cigarette butts. Others were observed binning larger items such as bottles, and littering the cap.

Since the 1997 study, another two similar studies have been undertaken. Essentially, the results of the latest study were similar to the 1997 “benchmark” study with regard to the amount of litter in public places. Just as there is no single “type” of person more likely than others to litter, there is no single factor that contributes to littering behaviour. Generally littering occurs as a result of a combination of factors.

There are a number of factors that may contribute to the amount of litter in our environment:

- A lack of understanding of the environmental consequences of littering
- Tolerance of irresponsible behaviour (littering)
- The amount of unwanted/unnecessary packaging used in consumer products
- Inadequate litter disposal facilities
- Ineffective street and public place cleaning standards and regimes
- Inappropriate products or product materials
- A lack of stormwater interception facilities
- A preference for cleaning up litter rather than prevention of it
- A lack of targeted education programs relating to litter
- Inadequate adherence to, and enforcement of, litter laws
- Competing priorities for enforcement officers compared with other duties
- Difficulties with enforcement
- Advertising practices, such as posting of advertising material under windscreens.

It appears that an appropriate mixture of legislative actions, education and carefully placed, well serviced infrastructure is needed to effect the behavioural change needed to improve the situation with regard to litter.

2. SCOPE OF THIS REVIEW

The scope of this review is to propose options for legislative reform regarding litter.

Legislation is only one element of an integrated approach required to reduce litter. Improvements in public education regarding litter, bin placement, bin servicing, stormwater management and other ‘non-statutory’ mechanisms are also necessary for the effective control of litter in our State. While these are outside the scope of this review, contemporary legislation will assist in raising public awareness about littering.

3. THE CURRENT APPROACH

The main legal instrument for the control of litter in Tasmania is the *Litter Act 1973*. There are other pieces of legislation under which powers to manage litter may be enforced (under certain circumstances), including the *Local Government Act 1993*, *Public Health Act 1997*, *National Parks and Wildlife Act 1970*, *Dog Control Act 2000* and the *Environmental Management and Pollution Control Act 1994*, although those pieces of legislation are not specifically related to littering. In addition, the *National Environment Protection (Used Packaging Materials) Measure 1999* has a bearing on litter.

As an example of how other pieces of legislation may relate to littering in a small degree, under the *Dog Control Act 2000* a person in charge of a dog must immediately remove and dispose of any faeces left by the dog in a public place or in a place not owned by the person.

The lead instrument for reducing packaging waste in Australia is the National Packaging Covenant, which is a voluntary agreement and runs for a period of 5 years to mid 2004. The Covenant is a national agreement between industries in the packaging chain and the Commonwealth, states and some local governments. It is designed to make packaging manufacturers responsible for minimising packaging waste, maximising recycling and reducing waste to landfill: this will have an impact on

litter. The *National Environment Protection (Used Packaging) Measure* is a legislative measure which came into force in all Australian jurisdictions including Tasmania and is designed to ensure that Covenant signatories are not disadvantaged in the market place. This provides a complementary regulatory safety net and affects those who do not sign the Covenant.

Examples of how National Packaging Covenant signatories are investing in anti-littering campaigns include the Beverage Industry Environment Council funding the “Don’t Waste Australia” (Do the Right Thing) campaign, litter prevention workshops, anti-litter programs at beach events, sponsorship of Keep Australia Beautiful and Adopt-a-Highway, sponsoring littering behaviour studies and conducting away-from-home and special event recycling.

Changes to the NEPM or the Covenant are outside the scope of this review. However, the success of the Covenant is currently under review.

Litter Act 1973

The *Litter Act 1973* currently governs the management of litter in Tasmania. The Act provides punitive measures to reduce the incidence of littering and to reduce the amount of litter in our public places. Litter is defined in the *Litter Act 1973* as follows:

"litter" includes rubbish, refuse, junk, filth, garbage, scrap, or other articles or material abandoned or unwanted by the owner or possessor thereof

The Act provides that it is an offence to cast, place or allow litter to fall on water or land that is not owned by the person littering, except if it is placed in a proper receptacle, or if permission of the landowner has been granted.

The Act provides for officers authorised under the Act (“authorised officers”) to issue Notices of Contravention (“on the spot” fines) for littering, or to prosecute for littering. The Act also can require someone to remove any litter deposited in contravention of the Act, within a certain timeframe. If the person asked to remove the litter does not do so, costs for the removal of the litter can be recovered, using the *Justices Act 1959*.

In Tasmania there are approximately 1600 authorised officers under the *Litter Act 1973* and these include staff of the DPIWE Environment Division, Tasmania Police officers and certain staff appointed by individual councils.

Litter Regulations 2000

The *Litter Regulations 1973* have been rescinded. The *Litter Regulations 2000* replaced the 1973 Regulations but only prescribe the format of the Notice of Contravention and the format for the authorisation of officers under the *Litter Act 1973*. The *Litter Regulations 2000* were a necessary interim measure for the proper functioning of the *Litter Act 1973*. With the *Litter Act 1973* (and the *Litter Regulations 2000*) under review, the continued need for prescribed forms will be considered as part of the review.

4. WHY CHANGE THE STATUTES?

The main reason for seeking to change the *Litter Act 1973* is due to the perceived need to modernise and improve that Act, with the ultimate aim of reducing the amount of litter in our environment. Many of the provisions of the Act are overly prescriptive and dated by comparison with modern legislative standards. With new issues, there need to be new approaches to address such issues.

Between 1989 and 2003, a total of 1850 Notices of Contravention under the *Litter Act 1973* were issued in Tasmania. Even taking into account Tasmania’s relatively small population, this number of contraventions can still be considered low compared to some other Australian states. Reasons for the

difference may relate to the ease of use of the respective legislation and/or the willingness to use that legislation and/or human and financial resources available.

In many states of Australia, there is an increasing emphasis on dealing with certain items, such as non-addressed mail, balloons and syringes in legislation, as such items have the potential to become litter, with differing consequences. Increasing the scope of the Tasmanian legislation to include such items may need to be considered.

5. OPTIONS FOR STATUTORY CHANGE

Whilst recognising that the *Litter Act 1973* makes provisions for action to be taken against a wide range of litter offences, there are a number of changes that are desirable to improve its effectiveness and to assist in the enforcement by authorised officers. This feedback has come from the community, councils, DPIWE and other government agencies.

Suggested changes or amendments to the Tasmanian *Litter Act 1973* could include some or all of the options discussed in Sections 5.1-5.3 (following). Where amendments to the 1973 Act are not suggested, the Department of Primary Industries, Water and Environment considers that the provisions of the Act are adequate to be transferred to a new statutory model. The *Litter Act 1973* can be found at www.thelaw.tas.gov.au and a summary of the features of the *Litter Act 1973* is given in section 3 (above). In many cases, the suggested changes reflect changes that have been made to legislation in other states.

Your views are sought on each of the following suggestions in Section 5 (below) with respect to how practical and effective they would be within a new statutory model.

If you wish to provide an abbreviated answer e.g. yes/no you may wish to submit the “Quick and Easy” response page at the end of this Paper either alone or in combination with a written submission.

There may be other issues that you think should be considered in framing new legislation. Please make a written submission if you feel that there are other issues that should be covered in new legislation, and include any further suggestions that you wish to make.

5.1 Definitions

5.1.1 *An altered definition of “litter”*

In the 1973 Act, litter is defined as including “rubbish, refuse, junk, filth, garbage, scrap, or other articles or material abandoned or unwanted by the owner or possessor thereof.” This definition has not been contested over the 31 year life of the Act. Litter could also be defined as including “any solid, or non-liquid substance or thing deposited in a place where its size, shape, nature or volume adversely impacts on the visual or physical amenity of a place”. The latter definition leaves affected parties and enforcement officers in need of using a value judgement to determine the impact of the litter: this has advantages in that it does not limit the offence, but disadvantages in that it broadens the potential for dispute over the nature of the offence and whether a fine is warranted.

In Victorian statutes, litter is defined as “any solid or liquid domestic or commercial waste, refuse, debris or rubbish and, without limiting the generality of the above, includes any waste glass, metal, plastic, paper, fabric, wood, food, soil, sand, concrete or rocks, abandoned vehicles, abandoned vehicle parts and garden remnants and clippings, but does not include any gases, dust or smoke or any waste that is produced or emitted during, or as a result of, any of the normal operations of the mining, building or manufacturing industry or of any primary industry”. Of note is that food, garden waste, soil and rocks are included as litter, as they have the potential to cause a visual impact and to

cause the spread of weeds. In the Victorian example, exception is made for various industries, including the building industry, despite that industry having been identified as often causing litter.

Your views are sought on the following issues:

- i. Does the scope of littering in the *Litter Act 1973* adequately cover all situations where litter is dumped?
- ii. Are there other inadequacies in the definition of litter in the *Litter Act 1973*?

5.1.2 *Discrimination between different types of littering*

It has been suggested that it may be appropriate to discriminate between different types of littering offences. There are two ways that this can be done.

It would be possible to make it a more serious offence if litter occurs as a result of a deliberate action that will or can reasonably be expected to cause litter. This distinction is a feature of litter legislation in some states and other related legislation in Tasmania. To use the *Environmental Management and Pollution Control Act 1994* as an example, it is a more serious offence to intentionally or recklessly cause environmental harm, than if this cannot be proven. In Victoria there is an offence called “aggravated littering” where successful prosecution hinges on the provision of proof that the act of littering was intentional. The fine for aggravated littering is higher than the fine for unintentionally depositing other litter.

The second option would be to make it a more serious offence to litter with objects that could be dangerous, compared with littering non-dangerous items. This is a feature of litter related legislation in some other states.

“Dangerous litter” could be defined as litter that is likely to endanger any living thing or to cause physical injury or disease. However, it may be difficult to pre-determine the risk that a certain item of litter poses. A plastic bag can cause a marine animal to choke, or a racing car to overheat, but normally would be inert and not dangerous. Broken glass may be more dangerous near a child’s playground than in other places. If a definition of dangerous litter and attached penalties are created, there will need to be careful consideration of how this may be enforced. Options include listing specific items as being dangerous, or leaving the definition open so that the enforcing officer can use discretion. If enforcement action is taken, this judgement would be open to challenge through the courts.

In Tasmania, there is already a provision under the *HIV/AIDS Preventive Measures Act 1993* that specifies that a person must dispose of a used syringe or needle in an appropriate container, attracting fines not exceeding \$5000. On a practical level, it may be difficult to witness breaches relating to the disposal of syringes from drug users at the time that they occur, however it is acknowledged that there are other sources of syringes, such as from diabetics, which could possibly enter the litter stream. The Department of Health and Human Services is working on a campaign to reduce the number of syringes disposed of inappropriately. It is currently a littering offence in NSW and in the ACT to discard a syringe in a public place.

Views are invited on whether to discriminate between intentional littering and inadvertent littering.

Views are invited on whether to discriminate between dangerous and non-dangerous litter.

5.1.3 Providing a definition of “depositing”

In New South Wales legislation, ‘depositing’ litter is defined. Implicitly, this describes situations where there is potential to cause litter.

“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 otherwise allowing litter to fall, descend, blow, be washed, percolate or otherwise escape into or onto the place.

The use of such a definition of ‘depositing’ offers enforcement officers the discretion to serve an infringement notice or prosecute on the grounds that a person or persons allow a situation to arise which has the potential to result in litter. This would be useful in the scenario of, for example, a shopping centre owner not assigning responsibility for closing the lid of a skip bin, and cardboard blowing out of the bin. As the *Litter Act 1973* now stands, it is an offence only where a person has witnessed the littering actually occurring.

Views are invited on whether it should be an offence to cause a situation that is likely to result in littering.

5.2 Changing the type and range of offences and penalties

To expand on the 1973 Act, there could be several types of ‘new’ litter related offences, to which clear and appropriate penalties could apply. For example, damaging litter bins, placing household rubbish in litter bins, discarding a lit cigarette butt, placing advertising material on vehicles, posting of bills and failure to comply with a litter abatement notice. These options are discussed below.

5.2.1 Changing the fines for littering and grading of penalties for different offences

There are arguments for increasing and/or providing adequate penalties for separate and distinct littering offences. Under the 1973 Act, penalties for littering infringements are a standard \$100, irrespective of the severity of the infringement. If the matter goes to court a magistrate has the discretion to fine an offender up to a maximum of \$2000, but there is no minimum set.

In New South Wales a single fine for littering has been replaced with a tiered range of ‘on the spot’ fines, including \$60 for littering small items such as bottle tops and cigarette butts. The fine for general littering and for littering from vehicles is \$200. In Western Australia it is proposed that the minimum fine for littering will be \$250 (for minor offences). In South Australia, the standard fine for littering is \$315. In Queensland, an infringement notice for littering can be issued for up to \$1237.50.

Where a matter relating to litter goes to court in Queensland, the maximum fine is \$12,375. In New South Wales, the maximum fine is \$5,500 for corporations or \$3,300 for individuals. Using such examples, it is apparent that the maximum fine for littering in Tasmania would need to be increased to be comparable to penalties in other states.

An argument that one Tasmanian Council has put forward is that issuing a \$10 or \$20 fine in the ‘early days’ of the 1973 Act was much easier and justifiable, for a minor offence, than issuing a \$100 fine. Many more infringements were issued by that Council when the lowest fine was \$20, compared

with when it became \$100. The effectiveness of increasing or decreasing fines needs to be considered. It must also be recognised that there are administrative costs in issuing and collecting fines.

It is not uncommon for councils to find large litter dumps in bushland, and councils have called for methods to approach this problem. It has been argued that a \$100 fine is not enough of a deterrent to this activity. Considering the time and expense it takes for an issue to be taken to court, many councils find it easier to simply collect the litter and take it to their landfill.

Providing a graduated scale of offences would provide a clearer distinction between, for example, general littering and aggravated littering, so that the most appropriate penalty can be applied. There is a \$375 fine for aggravated littering in New South Wales, and in Victoria there is also a fine for aggravated littering. In the ACT it is proposed that a definition of aggravated littering, with associated fines, will be introduced in new legislation.

A graduated scale of offences would guide authorised officers and magistrates in dealing with offenders to reflect circumstances where the act of littering causes minimal harm, or contributes to appreciable danger or harm to persons, animals, premises or property, or is likely to do so.

Many councils expressed a desire for a tiered range of fines, as long as there are not too many gradations. The message came across that the system should be simple having e.g. 2 or 3 tiers of fines.

Your views are sought regarding:

- i. changing the fines for littering
- ii. the provision of a graduated scale of offences

5.2.2 *Fines for disposing of household or commercial waste in litter bins*

Litter bins are provided for the disposal of litter only. When household or commercial waste is placed in litter bins, space that would otherwise be used for litter is occupied. The result is often overflowing bins and further littering, as there are no empty bins available.

The possibility of issuing a fine for those disposing of household waste in litter bins could be considered. If household and commercial waste are not accepted in litter bins, “household” and “commercial” waste would need careful definition. In New Zealand laws exist which disallow the deposition of “other” wastes in litter bins. Councils have broadly agreed that it should be an offence to place household or commercial waste in litter bins.

Queensland is about to commence a review of its waste regulations and in that review the regulation of the placement of household or commercial waste in litter bins will be considered. In the ACT it is proposed that in new litter legislation there will be a clause prohibiting commercial operators from using litter bins for their commercial waste.

Your views are sought on whether it should be an offence to dispose of household/commercial waste in litter bins.

5.2.3 *Fines for vandalising litter bins*

Fines could also be introduced for those vandalising litter bins, as damaging or destroying a litter bin may affect the bin in such a way that it cannot be used by a member of the public for its purpose. This may result in litter if facilities are not available for the correct disposal of waste.

It is an offence to vandalise, under the *Police Offences Act 1935*, but there are only a limited number of enforcement officers under that Act. The Police have indicated support for a separate provision under new litter legislation that makes it an offence to vandalise a litter bin, and they see no overlap with the provisions in the *Police Offences Act 1935*. They agree that it would be useful to have such a provision, as then other officers who are authorised under the new litter legislation, such as council or DPIWE officers can also enforce it.

In Victoria, in the *Environment Protection (Resource Efficiency) Act 2002* it is an offence to deface or set fire to a public litter receptacle.

Your views are sought on whether it should be an offence under revised litter legislation to vandalise a litter bin.

5.2.4 *Fines for discarding a lit cigarette butt*

Cigarette butts are a common source of litter and can have adverse environmental effects. In NSW the 'on the spot' fine for littering a cigarette butt is \$60. Where a lit cigarette butt causes injury to a person, the aggravated littering fine of \$375 may apply (as it is linked to the definition of dangerous litter). The focus for the fine for discarding a lit cigarette butt is not in the event that it causes a fire, it is in the event that it causes harm to another person. Where a lit cigarette causes a bushfire, this would be dealt with under different legislation.

The Tasmanian Fire Service supports the development of an infringement for discarding a lit cigarette butt, but sees that there is no need to expand the provisions of any revised Litter Act to include a penalty for a lit cigarette causing a serious fire and/or a bushfire. Provisions already exist under the *Fire Service Act 1979* that could be used to prosecute a person if that person discarded a lit cigarette on a day of Total Fire Ban and it was shown to be the cause of a fire. There is only a small chance that a lit cigarette could start a serious fire, and if so, it would most likely only be on situations such as a day of Total Fire Ban. Even though the Fire Service acknowledge that it would be difficult to prove, they do not dismiss the possibility of a successful prosecution under the *Fire Service Act 1979* in the case of a serious fire being caused by a lit cigarette.

Your views are sought on whether the littering of a lit cigarette butt should attract a higher penalty e.g. for aggravated littering.

5.2.5 *Restricting bill posting*

Other states have considered the option of regulating the placement of advertising (bill) posters, as they can potentially become detached from buildings or poles where they are placed and become litter. They are also costly for councils to remove and become unsightly in great numbers and as they age.

In Victoria bill posting without the permission of the property owner, occupier or manager is now prohibited under the *Environment Protection (Resource Efficiency) Act 2002*.

One Tasmanian Council has proposed:

- (a) that it be an offence to deposit unauthorised advertising material in any place
- (b) that the advertiser must give the name and address of the person responsible for distributing the advertising material
- (c) that a person who engages another to deposit advertising material must give the name and address of that person
- (d) that an infringement notice may be issued to the responsible party.

Under the Tasmanian *Police Offences Act 1935* it is an offence to, in any street or town, “write upon, soil, deface, or mark any wall, fence, hoarding, footpath, or building, or, without authority, affix, or cause to be affixed to any church, chapel, or school-house, or, without the consent of the owner or occupier, to any other building, or to any wall, fence, or hoarding, any bill or other notice, or wilfully break, destroy, or damage any part of such wall, fence, hoarding, or building, or any tree, shrub, seat, or other thing”. A person who contravenes that provision is guilty of an offence and is liable on summary conviction to a penalty.

The *Police Offences Act 1935* can be used by police and/or any citizen, but there is a need to witness the act of bill posting in order to prosecute.

The *Defacement of Property Act 1898* was established to ensure that in rural and natural areas there was not a proliferation of signs that destroyed the ambience and amenity of that environment. Under Section 2 “No person shall affix, inscribe, print, paint, carve, engrave, or otherwise delineate, so as to be visible to any person passing along any highway, road, footpath, bridle-path, railroad, river, or other place open to the public, or authorise or allow to be so affixed, inscribed, printed, painted, carved, engraved, or otherwise delineated to or on any rock, wall, pillar, post, gate, fence, fence-wall, hoarding-board, tree, or any other thing whatsoever, being property vested in the Crown or any council or other public body, or, being private property, without the consent of the owner or occupier thereof, any picture or printed or written matter, or any advertisements or signs of any sort whatever”. In the event that an authorised officer under this Act does not witness an offence, only *prima facie* (“on the face of it”) evidence is needed in order to issue a notice. For example, the promoter of an event is deemed responsible and bears the onus of proof for bills that are put up about the event. This may avoid possible confrontations on the street with the person posting the bill who, for the most part, is likely to be an agent of the responsible party.

Exemptions within this Act, however, include signs on private premises and signs that are within the boundaries of the cities of Hobart, Launceston, Glenorchy, Devonport or Burnie or towns or cities with more than 400 dwellings.

Only the Crown has the authority to enforce the *Defacement of Property Act 1898*, and in practice the Crown does not have the resources to enforce every misdemeanour in every area of the State. Local Government generally has the ability to use planning schemes to regulate the types of signs in their municipal areas, but the administrative difficulties and timeframes for enforcing powers with respect to such offences under planning schemes provide an obstacle to successful and timely prosecution.

The option exists for councils to establish by-laws to prohibit the posting of bills, but even if a model by-law is drafted, there may be differences in the way that each council interprets and accepts this model.

One option for regulating the posting of bills may be to combine elements, definitions and provisions from the *Police Offences Act 1935* and the *Defacement of Property Act 1898* in a revised Litter Act or equivalent. The provisions could include a means to trace offenders.

There may be benefits of banning the posting of bills within a new litter related statute in that offences could be more easily established and there would be the possibility of using litter infringements for relatively small misdemeanours.

Your views are sought on whether it should be an offence to post bills without the authority of the owner of the place where they are being posted
Your views are sought on whether the posting of bills should be under a new regulatory framework for litter control e.g. a new Litter Act.

5.2.6 Provisions in relation to the distribution and placement of advertising material

An option for Tasmania is to have a similar system to New South Wales and Victoria whereby it is illegal for advertising material to be placed under car windscreen wipers, on property gates or fences, and other areas where it has the potential to become litter. In the ACT it is proposed that similar legislation will be imposed. In the review of waste regulations in Queensland in 2004, legislation to regulate the placement of non-addressed advertising material will be considered.

It must be noted that this legislation has come about in NSW with support from 90% of the letterbox distribution industry, via the peak industry body, the Distribution Standards Board (DSB). The DSB has released a Code of Practice for the distributors of non-addressed mail, including proper delivery into appropriate letterboxes to reduce the potential for littering. Obviously it is in the interests of the industry to ensure that their material does not become litter and that all advertising material meets its proper destination/audience. Distributors are asked to sign a contract to ensure that they deliver the mail correctly, having been given a list of specific instructions relating to litter prevention and privacy.

DPIWE has received no litter related complaints derived from the dumping or littering of advertising material in the last five years. This is not to say that dumping has not occurred or that legislation may not be a useful tool. In New South Wales, advertising material makes up 2% of the litter stream – it could be inferred that the figure is approximately the same in this State. The question arises as to whether legislation to regulate the placement of non-addressed material is necessary and if the industry can reliably self regulate.

Your views are sought on whether to regulate the placement of advertising material in order to prevent litter.

5.2.7 Regulation on the covering of loads of material which can potentially become litter

New litter legislation could require the covering of loads of material that can potentially become litter.

The *Vehicle and Traffic (Vehicle Operations) Regulation 2001* exist in Tasmania. One part of these regulations specify how loads are tied down, but they only relate to those loads (such as sand and gravel) which can become a traffic hazard.

In Victoria, Section 45U of the *Environmental Protection (Resource Efficiency) Act 2002* deals with such potential:

- (1) *A person must not require another person to move a vehicle carrying a load unless he or she supplies the other person with sufficient means to secure the load in such a way that litter cannot leave the vehicle without human assistance.*
- (2) *A person who is in control of a moving vehicle must ensure that it is loaded in such a way that litter cannot leave the vehicle without human assistance.*

Western Australia and Queensland have similar legislation.

Your views are sought on whether it should be an offence under litter legislation if a load is not secured to prevent material being released and becoming litter.

5.2.8 Restricting the large scale release of balloons

In NSW it is an offence to intentionally release 20 or more lighter-than-air balloons in an outdoor environment, with a greater penalty for the release of more than 100 balloons. There are exceptions, for example, for meteorological balloons. Such large scale releases of balloons are rarely undertaken in Tasmania, except at large community or sporting events. However, it is becoming more common for about 100 balloons to be released at funerals.

In approximately eight US states, mass release of balloons has been banned. Several other states have considered such legislation, but have rejected it. Interestingly, balloons found on the East Coast of the USA have originated in places as far away as the mid-western USA.

Balloon waste has been seen to have the most impact on marine mammals and turtles, with some impact on terrestrial animals and birds. Marine creatures can mistake balloons for food, such as jellyfish or squid. There have been cases where semi-inflated balloons block the pyloric valve between the stomach and intestines so that food cannot pass through, causing slow and painful starvation. Balloon litter is being found on remote islands off the coast of Tasmania. Surveys of marine debris show small amounts of balloon litter, about 1 balloon per kilometre in Victoria.

With a large proportion of Tasmanians living in urban centres based around coastal areas, balloons that are released in this State may end up in waterways. It would be difficult to determine the impact of this. It is also difficult to determine how many marine mortalities balloons cause in total.

The balloon industry claims that balloons shatter when they reach the upper atmosphere. However, some sources estimate that approximately 5-10% of balloons do not reach a high altitude and may remain inflated and float many kilometres, before descending back to the land or sea in a semi-inflated state. Studies have shown that balloons can persist in the environment for anywhere between 6 weeks and one year.

The balloon industry has a Code of Practice, whereby balloons for mass release should not be underfilled or filled with any air mix (to minimise the chance they end up as litter) nor should clips or attachments be used.

P.R.W.Kendall, Medical Officer of Health for the City of Toronto, has summed up the issue as follows:

“Given the level of uncertainty regarding the environmental impacts of balloon releases, this issue appears to have less to do with the protection of wildlife and more to do with the release and distribution of an unnatural, slowly biodegradable and non-beneficial substance into the environment. In effect, balloon releases represent a controlled form of littering, and as with any form of littering, it carries with it a nuisance factor along with some potential for damage to the environment under certain conditions”.

There may be several options for the control of the large scale release of balloons. Legislation could be one option. A permit system (with only a certain number of permits issued per annum, under specified conditions) could be developed, or a government policy on balloon release. It must be recognised that there would be costs associated with the administration of a permit system and that this would probably divert resources from other environmental issues. There could also be financial and employment repercussions if the large scale release of balloons is banned, although these impacts are estimated to be small.

There are no other known models of permit systems or policies.

Does the release of balloons on a large scale warrant regulation through litter legislation?
--

5.3 Methods of Enforcement

5.3.1 Litter Infringement Notices (“On the Spot Fines”)

In the 1973 Act, a Notice of Contravention is the tool used for a relatively minor littering offence. The capacity to issue on-the-spot fines is now included in many pieces of legislation. These fines are usually imposed by way of an Infringement Notice, which can be issued for specified low-level offences (e.g. on-the-spot traffic offences such as speeding). An Infringement Notice carries a fixed penalty and can be challenged in court. The enforcement authority always retains the discretion to deal with the offence through court action.

It is appropriate to retain the capacity to issue on-the-spot fines to avoid the expense and time of using a magistrate’s court for relatively minor litter related offences. Infringement Notices for littering offences could carry fines of up to several hundred dollars. The legislation could provide for an infringement notice to be issued for such misdemeanours as damaging litter bins, placing household rubbish in litter bins and discarding a lit cigarette butt.

Your views are sought on whether Litter Infringement Notices “On the Spot Fines” should be retained.

5.3.2 Litter Abatement Notices

Drawing on similar provisions in other legislation, a Litter Abatement Notice would be a tool that would require a person to do, or refrain from doing, something that is causing litter, or to clean up litter that they have caused. For example, a Litter Abatement Notice could require a person to do one or more of the following within the time frame specified in the Notice:

- *to not deposit material that is or is likely to give rise to litter*
- *to take actions to ensure that no litter escapes from any premises occupied by the person;*
- *to do or not do, specified things to ensure that the person does not generate litter;*
- *to clean up any place affected by the litter to a state as close as practicable to the state it was in immediately before the litter was deposited;*
- *to take any other action in relation to the litter that is specified in the notice.*

It would be an offence to breach an Abatement Notice, and it would be possible to allow for Infringement Notices to be issued for not complying with or breaching the requirements of an Abatement Notice.

It would also be possible to provide that if the person to whom the notice is issued does not take the actions required by it, the authorised officer who issued it may take action and recover the costs from that person. This provision is likely to increase the probability of a person complying with an abatement notice without the need for court action.

It is usual to provide that such notices may be appealed.

Such notices could be applied in a wide variety of circumstances. For example:

- To require action to prevent litter escaping from a building site and to clean up that which has escaped;
- To require the removal of dumped vehicles that constitute litter;
- To restrict the amount of materials that may generate litter being stored on a site or regulate how it is stored.

The ACT and Victoria use abatement notices for litter control.

Your views are sought on whether Litter Abatement Notices should be included in new litter legislation.
Your views are sought on whether there should be the capacity for the authority issuing the abatement notice to take action required by such a notice (e.g. remove litter) and then recover costs.

5.3.3 Evidence required to prove an offence

In many, if not most, cases of littering, there are no eye-witnesses. Complaints have been levelled at the 1973 Act by some local government staff because even if the weight of circumstantial evidence points to a certain person or company who has littered, a conviction is not seen to be possible with circumstantial evidence alone. The situation frequently arises where bags of rubbish are found in bushland areas, and identifying receipts, letters and personal items found in the rubbish strongly suggest who is likely to have thrown the rubbish away. Under the 1973 Act, an offence cannot be proven unless there is concrete evidence as to who deposited the rubbish.

Many council staff believe that the onus of proof should be on the person who can clearly be linked to the rubbish to prove that they did not dispose of it, rather than the authorised officer needing to prove that a particular person was the offender. This is called reverse onus of proof.

There are some examples of reverse onus in Tasmanian legislation, such as:

- where there is a suspicion of a drug related offence, whereby, for example, if a person is in possession of over a certain quantity of marijuana, that person is guilty of an offence unless they can prove that they did not sell that substance.
- with stolen property, unless a reasonable excuse is given by the person holding the goods, police can assume that the property in question has been stolen.
- the Tasmanian *Civil Liability Act 2002* allows for a presumption that a person knew of an obvious risk of an activity which caused an injury, and therefore accepted that risk, unless he/she proves on the balance of probabilities that he/she was not aware of it.

While these are examples, it is much easier to identify a responsible person in each of the above cases, compared to an event of littering.

The potential for a provision of reverse onus in litter legislation to be abused or to unfairly penalise people must be considered. For example, a person could maliciously remove another person's rubbish from their home and deposit it in a public place, or material left out for rubbish collection could be removed and dumped. The potential for wrongful conviction will need to be weighed against the advantages of more easily proving litter offences.

Legal advice indicates that the reversal of the onus of proof in relation to littering would be difficult to achieve from a technical perspective. This is because the circumstances in which litter may contain information which identifies a person or persons will be highly variable. It would be difficult to distinguish between material of value in proving an offence and material that does not. A large bundle of envelopes which carry the same name could be found in the bush, but it does not necessarily mean that the person identified on the envelopes put the rubbish there. It is possible that rubbish could contain mail that was addressed to a number of different people in a household or business. In such a case, it would be difficult to determine which of those persons, if any, put the rubbish there. Furthermore, it would be difficult for a person to prove their innocence if they are implicated by identifying pieces of litter. Since there would normally be no clear dates which might give rise to an alibi, all that the Court has to work with is the oath or affirmation that the person in question was not the person responsible for the litter.

On balance, the disadvantages associated with the option of reverse onus of proof appear to outweigh the benefits because it may unreasonably compromise the rights of individuals.

Your views are sought on options for obtaining successful prosecutions for those who abandon rubbish and where there is circumstantial evidence on which to prosecute them (without unreasonably compromising the rights of individuals).

5.3.4 Powers of authorised officers

Any new litter legislation would need to provide for the appointment of authorised officers who have the power to issue Infringement Notices, and in doing so, provide those officers with enough powers to take matters to court.

In the *Litter Act 1973* and subsequent amendments, authorised officers under that Act are

- 1) those officers, and council officers who were authorised under the *Environmental Management and Pollution Control Act 1994*,
- 2) all police officers, and
- 3) all bailiffs of Crown Land.

Also, in the *Litter Act 1973* officers can be appointed by municipal mayors and the Secretary of the Department of Primary Industries, Water and Environment or Head of the State service agency in which a state government employee works.

In the ACT, parking officers and road safety officers are authorised under their litter laws.

Under the *Litter Act 1973* authorised officers have very restricted powers to collect evidence. There are powers to seek the true identity of persons who could be party to an offence, and there are penalties associated with giving a false name and address. However, there are no powers to have the accused prove that they are the person that they allege they are e.g. by providing evidence of their place of residence and/or of their identity. Also, there are no powers to obtain a written statement from a witness in relation to an incident.

In Victoria enforcement officers have the power to seek the true name and address of alleged offenders. There is also the power using Victorian legislation to enter a premises where an offence is being or likely to be committed and the power to remove litter if a direction is not complied with. Where officers can determine that litter will arise from a particular premises, the latter powers may be useful in abating that litter. Additionally, in Victorian legislation there is the power to obtain statements from suspects, but such information is not admissible if, before giving the information, the person objected to giving information on the grounds that it may incriminate him or her.

If greater powers were to be given to authorised officers, a more rigorous selection and training program is likely to be required, commensurate with these powers.

Your views are invited on whether enforcement officers should be given greater powers to identify persons who are party to an offence.

Your views are invited on whether you believe that the powers of enforcement officers should be increased to facilitate the taking of statements from witnesses.

Your views are invited on whether there are any other powers that should be given to authorised officers in order to enhance the ability to successfully prove an offence.

5.3.5 Registered operators of vehicles to be held responsible for littering offences

In the past, it has been difficult to use the *Litter Act 1973* to prosecute a person for littering from a vehicle because it had to be proven who actually performed the littering offence before the infringement notice was issued. While an authorised officer can require the registered owner of a vehicle to provide this information, in practice it has often proved difficult to establish the identity of the person responsible for the offence.

The likelihood of successfully penalising offenders would be improved if the new legislation provided that the registered owner of the vehicle is held to be responsible for the litter. If that person could ascertain the identity of the person who littered at the date, time and location of the offence, then they may provide this information and the notice issued to the person in question. If the vehicle is reported stolen or otherwise disposed of prior to a littering event, this can be used to exempt the owner from the offence.

In Queensland, Victoria, New South Wales and Western Australia, registered owners of vehicles are responsible for litter arising from their vehicles. In the ACT it is proposed that similar legislation will be introduced in early 2005.

Some consideration may need to be provided for offences committed by passengers of public vehicles as it would be unfair to hold owners of those vehicles responsible for littering committed by passengers. It would be difficult, inconvenient and possibly unsafe, for a bus or taxi driver to enforce the law or to collect and pass information to an authority about an offender.

Your views are sought on whether the registered owners of vehicles should be held responsible for offences involving littering from vehicles.

5.3.6 The provision for public reporting of a littering offence to an authority

As mentioned in Section 4 (above) there have been relatively few Notices of Contravention (1850) under the *Litter Act 1973* in its 31 year history. In Victoria, for example, 18,500 litter infringements are issued every year by the Environment Protection Authority (EPA) alone. Tasmania's relatively low numbers could be the result of many factors, such as the willingness of authorised officers to issue notices, the number of authorised officers, competing priorities for enforcement and/or legislative impediments.

In the Victorian *Environment Protection (Resource Efficiency) Act 2002*,

- “(1) A person who sees another person committing an offence under this Part may inform the Authority or the relevant council of the offence by sending in a signed and written report containing-
- (a) the date, approximate time and place of the offence; and
 - (b) the nature of the litter; and
 - (c) any evidence of the identity of the person who committed the offence.
- (2) On receiving a report under subsection (1), the Authority or Council may take proceedings through its relevant officers against the person seen committing the offence.”

In Victoria, the way that this provision is used is that there is a hotline for people to call if they see another member of the public littering. Alternatively they can access the Victorian EPA website to fill out a form indicating the details of the offence. The Victorian EPA receives the complaints and issues an infringement notice on the basis of an adequately reported complaint.

In the experience of the Victorian EPA, no such infringements have been contested. They have advised that the necessity that claims be accompanied by a signed and written report deters people from making false or malicious reports.

The Victorian example is one method of increasing the number of litter offences that are penalised. The question should be raised as to whether simply increasing the number of fines issued has the impact of reducing the amount of litter by changing the behaviour of those who would potentially litter. It has been estimated in Victoria that for every fine issued, the message is spread to a further 20 people associated with the person fined. It is assumed that this provides some form of anti-littering message to 370,000 people. The advertising that accompanies the “dob in a litterer” campaign would have an impact on littering behaviour too, but has not been quantified.

The Solicitor General has advised that under current legislation it would be possible for the public to report offences and for the Government to issue infringements based on these reports. However, if this approach is to be pursued with vigour there will need to be a system and resources to deal with publicly reported incidents and it may be an advantage to recognise this through legislation.

The Queensland Government is considering the implementation of public reporting of an offence in their review of the *Environment Protection (Waste Management) Regulations 2000*.

Under the Tasmanian *Litter Act 1973* there is provision for the authorisation of volunteer officers. The number of volunteer officers authorised depends on the will of people to be nominated and of the authorising agencies. There are some issues with insurance/liability regarding the appointment of volunteer authorised officers, which will need to be resolved if volunteer officers are to be appointed under new litter legislation. Also, if powers of authorised officers are to be expanded, (as in Section 5.3.4 of this paper) some consideration needs to be given to whether it would be appropriate to have volunteer officers with increased powers. It could be argued that if there are provisions for the public reporting of minor littering offences, which would constitute the majority of offences, having volunteer authorised officers would not be necessary.

Your views are sought on whether new legislation should include a system for the Government to pursue offences reported by the public.

Your views are sought on whether volunteer authorised officers should be used to enforce new litter legislation.

5.4 Issues outside the Scope of the Review

The following issues are pertinent to a discussion about litter legislation but are currently not being considered for inclusion in the scope of new Tasmanian litter legislation for the reasons set out below:

5.4.1 Specific treatment of plastic bags

The issue of the management of plastic bag waste and litter is currently being considered at a national level by the Environment Protection and Heritage Ministerial Council.

It is estimated that Australians use about 6.9 billion plastic shopping bags per year, and many of these are used only once. The recycling rate for plastic bags is less than 3%, and plastic bags make up approximately 2% of the litter stream. Many arise as windblown litter from rubbish tips, or travel in waterways, affecting aquatic life.

In Ireland, there is a tax of 10p on plastic shopping bags. Ireland’s Minister for Environment said in August 2002 “The reduction (of the issue of plastic bags) has been immediate and the positive visual impact on the environment is plain to see”. The number of bags issued by the 3000 retailers involved in the Irish bag reduction scheme fell by 90%. A number of other countries in Europe have had similar schemes for a number of years.

Suggestions that a levy should be placed on plastic bags in Australia has prompted the issue to be considered by the Environment Protection and Heritage Ministerial Council. In 2003 the Council accepted an Australian Retailers Association Code of Practice for the Management of Plastic Bags, which commits signatories to a 25 percent reduction in plastic bags issued by the end of 2004 and an audited 75% reduction in bag litter by December 2005. The Ministers have also flagged their intention for a total phase out of lightweight plastic shopping bags within 5 years. The ultimate aim of the reduction in plastic bag use is to reduce litter and reduce plastic bag waste going to landfill.

If the commitments made by retailers are not met by the specified time, there is the option of using legislation to enforce a specified level of reduction, reuse or recycling.

As this issue is being dealt with in a national Ministerial forum and any legislative action is likely to flow out of that forum, it is not intended to address it in this paper.

Irrespective of whatever initiatives are under-way to reduce plastic bag litter, it is clear that there will be a need to have littering of plastic bags as an offence.

5.4.2 Land Stewardship

The extension of land stewardship to litter related issues has been investigated in Victoria, but has not been placed in legislation. Land stewardship in relation to litter can be defined as the responsibility that an owner/operator has for a building, premises or land to keep that building, premises or land and immediate surroundings free of litter. If litter abatement notices are being introduced, as proposed in Section 5.3.2 (above), this could be seen as an alternative way of requiring land stewardship.

A land stewardship principle of a more general nature could be included to ensure that there are, for example, facilities for smokers outside rented office blocks, or to ensure that there are litter bins provided at temporary events such as festivals. It is possible to create such obligations, but the relevant laws would be relatively difficult to draft. This is because of the need to carefully define the buildings/situations to which they are to apply, the type(s) of litter that would need to be collected and the distance around the premises which needs to be tidied.

In the *Litter Regulations 1973*, there were provisions whereby persons who sold commodities in non-returnable containers in or near the place of sale, or issued admission tickets, needed to provide receptacles for discarded containers or documents. This provision was never enforced and the penalty of \$10 was seen to be inadequate. A code of practice is being developed in Britain that will enlist take-away food outlet operators in cleaning up litter around the respective vicinities of their food outlets. This is in response to a Keep Britain Tidy report pointing to a 12% increase in food packaging on streets.

Difficulties lie where there are more than one take-away food outlet in any given area. Often there are clusters of such outlets. Designation of responsibility for litter clean up becomes clouded if there is not clearly marked packaging from each food outlet.

No other jurisdiction has legislation regarding land stewardship in relation to litter. It may be possible in future to amend litter legislation to take account of such principles, but at this stage there is uncertainty about how land stewardship provisions in relation to litter would operate.

5.4.3 Product Stewardship

Over recent years there has been an increasing trend towards the use of “disposable” packaging. In the absence of clear government guidelines and advances in technology, the packaging industry has generally responded readily to, or even encouraged, consumers’ and retailers’ preferences for

convenience packaging. Whilst it is recognised that the improved packaging is associated with a number of benefits such as cost savings, hygiene and convenience, the community has been burdened with the growing problems of litter and urban solid waste management.

The closest that our litter laws broached this subject of product stewardship was in the now rescinded *Litter Regulations 1973* which detailed the requirement for people selling commodities in non-returnable containers and/or those issuing admission tickets to provide and maintain receptacles for the deposit of such items. It did not deal with a number of sources nor with the design of the packaging or the eventual reuse or recycling possibilities for the packaging.

Manufacturers and suppliers of products that either give, or have the potential to give rise to litter have a shared responsibility for litter reduction in our community. There is therefore potential scope and need for industry to increasingly adopt a product stewardship ethic, including the development of support infrastructure and information programs which ensure the successful recapture of discarded materials before they become problem litter items.

Greater attention should be made to the selection of packaging materials and the likely receiving environment in terms of their design, recyclability, weight, shape and transportability.

The National Packaging Covenant and the National Environment Protection Measure (NEPM) on Used Packaging Materials was intended to address the responsibilities of the manufacturers, suppliers and the consumer with respect to implementing product stewardship principles into operational policy. Additional measures may include:

- The negotiation of industry waste reduction agreements with manufacturers of problem products, such as cigarettes
- The development of codes of practice on litter management
- Education programs on litter management

In any discussion of product stewardship, particularly with regard to beverage containers, the issue of compulsory deposits arises. Container Deposit Legislation (CDL) refers to legislation that establishes a deposit and refund system for used containers and aims to ensure that the responsibilities of both producers and consumers are maintained from production to final disposal or recycling. Amongst other things CDL is seen to be one effective way of reducing beverage container derived litter in public places.

There are arguments both for and against CDL, and there have been a number of expert reports prepared over the past few years in which these issues have been debated (e.g. the Hon Bob Debus, Minister for the Environment in New South Wales commissioned a report entitled “Independent Review of Container Deposit Legislation in New South Wales”). It has also been discussed at the Environment Protection and Heritage Ministers Council where the view has been put that if CDL were introduced it would have to be introduced at a national level because of legislation that allows for free trading between states (the *Mutual Recognition Act 1997*).

The current National Packaging Covenant expires in August 2004. A thorough review of the Covenant and the extent to which it has achieved its objectives is currently being undertaken. If this evaluation shows that the Covenant has been ineffective then Governments will need to consider alternative approaches, which could include a national CDL system. If CDL were introduced, it would be a very comprehensive piece of legislation, so would be separate legislation to that proposed by this review. Therefore it is not proposed to include consideration of CDL in the scope of the current review of the *Litter Act 1973*.

6. STATUTORY INSTRUMENTS

There are several possible approaches to changing litter laws in Tasmania. These are:

- amending the *Litter Act 1973*;
- including littering provisions into the *Environmental Management and Pollution Control Act (EMPCA) 1994*; and
- constructing a new litter management act.

The Solicitor General has indicated that so many changes are likely that amending the current Act does not seem appropriate.

The EMPCA could be amended to include new provisions to regulate litter. However, the main impact of litter is to cause a visual impact that is currently outside the scope of EMPCA. EMPCA is fundamentally concerned with preventing environmental harm. While the definitions of “environmental harm” or “pollution” could be broadened to encompass litter this may have other unintended effects in terms of broadening the scope of EMPCA.

Other states such as Victoria and Queensland have amended their equivalent environmental protection legislation to include litter provisions. There are some disadvantages with increasing the scope of environmental protection legislation and potentially limiting the types of litter management options available using existing environment protection legislation.

Litter is a social, environmental and aesthetic issue. A new stand-alone litter management act would offer the most flexibility to incorporate the range of options canvassed in Section 5 (above). It could provide specific tools to deal with litter rather than relying on retro-fitting the current environmental management tools in EMPCA. It is considered that this will be the best option for Tasmania.

REFERENCES

Balloon Artists and Suppliers Association of Australasia (undated) *Code of Practice: Balloons and Related Products*, Logan City, Queensland, Australia.

Burchette D.K. (1989) *A Study of the Effect of Balloon Releases on the Environment* National Association of Balloon Artists, Publisher unknown, U.S.A.

Clean Ocean Action (2000) *Mass Balloon Launches* in Clean Ocean Advocate. <http://www.cleanoceanaction.org/NewsLetters/2000/december/NPSP.htm> (13 Aug.2002)

Curnow, R and Spehr, K. (1997) *Understanding Littering Behaviour in Australia*, Community Change Pty Ltd and Beverage Industry Environment Council, Leichhardt, Sydney.

Curnow, R and Spehr, K. (2001) *Measuring Environmentally Desirable Behaviour*, Littering Behaviour Studies III, Community Change Pty Ltd and Beverage Industry Environment Council, Leichhardt, Sydney, Australia.

Distribution Standards Board (undated) *Code of Practice*, Distribution Standards Board, Melbourne, Victoria.

Dog Control Act 2000, Tasmania

EcoRecycle Victoria (1999) Executive Summary of Annual Report, Victoria, Australia.

Faversham House Group Ltd (2002) *Plastic Bag Levy a Success in Ireland*. <http://www.edie.net/news/Archive/5872.cfm> (26 Aug 2002)

Kendall, P.R.W. (1990) *Environmental Impact Associated with Balloon Releases*, Memo of April 10 to Neighbourhoods Committee City of Toronto, Canada.

Litter Act 1973, Tasmania

Marine Conservation Society (undated) *Balloon Releases – Environmental Concerns*, Pollution Factsheet http://www.ukrivers.net/balloon_fact.html (13 Aug 2002)

Marine Conservation Society (1998) *Balloons, Not Just Hot Air*, Press Release to British Media (13 Aug 2002)

Maunsell Proprietary Limited (1996) *The Australian Marine Debris Status Review*, Final Report prepared for The Australian and New Zealand Working Party on Marine Debris.

New South Wales Environment Protection Authority (2002) *Managing the Delivery of Unsolicited and Unaddressed Advertising Material: Final Report*, May 2002, Sydney.

New South Wales Environment Protection Authority (2002) *Unlawful Distribution of Advertising Material*. <http://www.nsw.gov.au/litter/litterlaws/advertising.htm> (17 May 2002).

Phillips, J. (2001) *Facsimile to Marg Monk* (Balloon Artists and Suppliers Association) regarding the percentage of balloon litter in the litter stream.

Protection of the Environment Operations Amendment (Littering) Act 2000 – Schedule 1, New South Wales.

Queenscliff High School (1989) *Plastic Pollution on the West Coast: A Study by Queenscliff High School*, Victoria.

Queensland Environment Protection Amendment Regulation (no.1) 2000, Queensland.

The Mercury, *Plastic Grocery Bag Fee Tipped*, Monday 9 September 2002, page3.

[Tibbetts, G](#) (2003) Take-Away Stores May Be Forced To Help Clear Litter, Article retrieved from www.telegraph.co.uk on 3/11/03.

Victorian Environment Protection Authority (2001) *The Statutory Framework for Litter in Victoria - Discussion Paper* Melbourne, Victoria.

Walker W.A. and Coe J.M. (1990) *Survey of Marine Debris Ingestion by Odontocete Cetaceans* in Shomura, R.S. and Godfrey, L. editors, Proceedings of the Second International Conference on Marine Debris, 2-7 April, Honolulu, Hawaii, U.S. Department of Commerce, NOAA Tech.Memo, NMFS, NOAA-TM-NMFS-SWFSC-154.

LITTER ACT 1973 REVIEW
“Quick and Easy” Response Page

Name:
 Organisation:
 Address:

Identify the issue below, and tick your response in the appropriate “yes” or “no” box.
 Any comments should be in the last box or on a separate page.

Issue	Yes	No
Does the scope of littering in the <i>Litter Act 1973</i> adequately cover all scenarios where litter is dumped (5.1.1)?		
Are there other inadequacies in the definition of litter in the <i>Litter Act 1973</i> (5.1.1)?		
Should there be a distinction between intentional and unintentional littering, and an associated distinction between penalties for those offences?		
Should there be a distinction between dangerous and non-dangerous litter, and an associated distinction between penalties for disposing of those items?.		
Should it be an offence to cause a situation that is likely to result in littering (5.1.3)?		
Do littering fines need to be increased? (5.2.1)		
Should there be a graduated scale of offences? (5.2.1)		
Should it be an offence to dispose of household/commercial waste in litter bins? (5.2.2)		
Should it be an offence to vandalise litter bins? (5.2.3)		
Should it be a littering offence to discard a cigarette butt?(5.2.4)		
Should it be an offence to discard a <u>lit</u> a cigarette butt (5.2.4),		
Should discarding a lit cigarette butt bring a higher penalty than for an unlit cigarette butt?(5.2.4)		
Should it be a littering offence to post bills without the authority to do so? (5.2.5)		
Should the posting of bills be under a new regulatory framework for litter control? (5.2.5)		
Should <i>prima facie</i> evidence be enough to establish guilt for posting bills?(5.2.5)		
Should the placement of advertising material be regulated?(5.2.6)		
Should the tying down of loads be regulated? (5.2.7)		
Does large scale release of release of balloons warrant regulation? (5.2.8)?		
Should Litter Infringement Notices (“On the spot fines”) be retained? (5.3.1)		
Should Litter Abatement Notices be developed? (5.3.2)		

Should the powers of enforcement officers be increased to enable officers the capacity to ask for names and addresses of alleged offenders? (5.3.4)?		
Should the powers of enforcement officers be increased to enable officers the capacity to take statements from alleged offenders and/or witnesses? (5.3.4)?		
Should the registered operator of a vehicle automatically be held responsible for litter arising from that operators vehicle? (5.3.5)		
Should a system be developed in Tasmania to issue an infringement notice purely on the evidence of a member of the public (e.g. 'dob in a litterer')? (5.3.6)		
Should volunteer authorised officers be used to enforce new litter legislation?(5.3.6)		
Any other comment?		