

House of Assembly—No 142

As laid on the table and read a first time, 24 July 2008

South Australia

Local Government (Litter) Amendment Bill 2008

A BILL FOR

An Act to amend the *Local Government Act 1999*.

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Part 1—Preliminary

- 1 Amendment provisions

Part 2—Amendment of *Summary Offences Act 1953*

- 2 Repeal of section 48
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Local Government (Litter) Amendment Act 2008*.

2—Commencement

- 5 This Act will come into operation on the first anniversary of the day of assent, or an earlier day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Local Government Act 1999*

4—Amendment of section 4—Interpretation

Section 4(1), definition of *litter*—delete the definition and substitute:

litter includes—

- 5 (a) solid or liquid domestic or commercial refuse, debris or rubbish and,
without limiting the generality of the foregoing, includes glass,
metal, cigarette butts, paper, fabric, wood, food, chewing gum,
abandoned vehicles, abandoned vehicle parts, construction or
10 demolition material, garden remnants and clippings, soil, sand or
rocks; and
- (b) any other material, substance or thing deposited in or on a place if its
size, shape, nature or volume makes the place where it is deposited
disorderly or detrimentally affects the proper use of that place,
whether or not it has any value when or after being deposited in or on
15 the place,

but does not include gases, dust, smoke or waste matter which is produced or
emitted during or as a result of the normal operations of the mining, building
or manufacturing industry, or a primary industry;

5—Repeal of section 235

20 Section 235—delete the section

6—Insertion of heading to Chapter 11 Part 3 Division 1

Chapter 11 Part 3—before section 236 insert:

Division 1—Abandoned vehicles

7—Insertion of Chapter 11 Part 3 Division 2

25 Chapter 11 Part 3—after section 237 insert:

Division 2—Littering

237A—Interpretation

In this Division—

30 *deposit*, in relation to litter, includes causing or allowing the litter to
blow or be washed away, or to fall or be otherwise deposited;

KESAB means Keep South Australia Beautiful Incorporated;

open private place means private land that is not within a building;

responsible authority, in relation to an authorised person who is an
authorised person due to the operation of section 237B, means—

- 35 (a) in the case of a person who is an authorised person due to
the operation of section 237B(h)—KESAB; or

- (b) in any other case—the administrative unit of the Public Service in which the person is employed; or

237B—Authorised persons

For the purposes of this Division, an authorised person includes—

- 5 (a) a member of the police force; and
- (b) an authorised officer within the meaning of the *Environment Protection Act 1993*; and
- (c) a fisheries officer within the meaning of the *Fisheries Act 1982*; and
- 10 (d) a forest warden within the meaning of the *Forestry Act 1950*; and
- (e) a warden within the meaning of the *National Parks and Wildlife Act 1972*; and
- (f) an authorised officer within the meaning of the *Natural Resources Management Act 2004*; and
- 15 (g) a warden within the meaning of the *Wilderness Protection Act 1992*; and
- (h) a member of the staff of KESAB authorised in writing by the Minister to be an authorised person for the purposes of this Division.
- 20

237C—Powers of certain authorised persons

- (1) An authorised person who is an authorised person due to the operation of section 237B may—
- 25 (a) require a person who the authorised person reasonably suspects to have committed, or to be committing or about to commit, any breach of this Division to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- 30 (b) require a person who the authorised person reasonably suspects has knowledge of matters in respect of which information is reasonably required for the enforcement of this Division to answer questions in relation to those matters;
- 35 (c) give expiation notices to persons alleged to have committed expiable offences under this Division;
- (d) give any directions reasonably required in connection with the exercise of a power conferred above,

but must not exercise any other power conferred on an authorised person under section 260 or any other provision of this Act.

- (2) Subject to subsection (3), a person who—
- (a) without reasonable excuse, hinders or obstructs an authorised person in the exercise of powers under this section; or
 - (b) uses abusive, threatening or insulting language to an authorised person; or
 - (c) without reasonable excuse, fails to obey a requirement or direction of an authorised person under this section; or
 - (d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an authorised person under this section; or
 - (e) falsely represents, by words or conduct, that he or she is an authorised person,

is guilty of an offence.

Maximum penalty: \$5 000.

- (3) A person is not obliged to answer a question or to produce a document or information as required under this section if to do so might tend to incriminate the person or make the person liable to a penalty.
- (4) A person who assaults an authorised person in the exercise of powers under this section is guilty of an offence.
- Maximum penalty: \$10 000 or imprisonment for 2 years.
- (5) An authorised person who—
- (a) addresses offensive language to any other person; or
 - (b) without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: \$5 000.

237D—Littering

- (1) Subject to this section, a person who, without lawful authority, deposits litter on a public road, public place or open private place is guilty of an offence.

Maximum penalty:

- (a) in the case of a small item—\$750;
- (b) in any other case—\$2 500.

Expiation fee:

- (a) in the case of a small item—\$80;
- (b) in any other case—\$160.

(2) A person who commits the offence of littering is guilty of aggravated littering if the depositing of litter by the person—

(a) caused, or was likely to cause, significant harm to any person, animal or property; or

(b) is of a kind prescribed by the regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(3) For the purposes of this section, anything that falls from a vehicle or vessel onto a public road, public place or open private place will be taken to have been deposited by the driver or operator of the vehicle or vessel unless it is proved that the driver or operator has furnished to the Commissioner of Police a statutory declaration stating the name and address of some person other than the driver or operator who deposited the litter.

(4) Subsection (3) does not apply in the case of a public passenger vehicle in the course of providing a passenger transport service.

(5) If an offence against this section is alleged, an expiation notice, an expiation reminder notice or summons in respect of that offence must be accompanied by a notice in the prescribed form containing—

(a) a statement that the Commissioner of Police will, in relation to the question of withdrawal of the expiation notice, reminder notice or complaint, give due consideration to any exculpatory evidence that is verified by statutory declaration and furnished to the Commissioner within a period specified in the notice; and

(b) such other information or instructions as is prescribed.

(6) If—

(a) an expiation notice for an offence against this section is given to a person named as the person who deposited the relevant litter in a statutory declaration under subsection (3); or

(b) proceedings for a prescribed offence are commenced against such a person,

the notice or summons (as the case requires) must be accompanied by a notice setting out particulars of the statutory declaration that named the person.

(7) It is a defence to a charge of an offence against subsection (1) to establish—

(a) that the act subject to the charge was done by or with the consent of the owner of the land on which the act was done; or

(b) that the defendant could not, by the exercise of reasonable care, have prevented the occurrence out of which the charge arose.

5 (8) The court by which a person is convicted of an offence under this section must, on application by a council in whose area the offence was committed, or the owner or occupier of the property in relation to which the offence was committed, order the convicted person to pay to the council or owner or occupier (as the case requires) any costs incurred by the council or owner or occupier in removing and disposing of anything deposited in contravention of this section.

10 (9) It is not an offence under this section to leave litter—

(a) in a receptacle provided or approved by a council; or

(b) in a manner directed or approved by a council,

15 in order that the litter may be collected by the council (but this subsection does not apply if the litter is left in contravention of any direction or resolution of a council as to the management of litter).

(10) In this section—

passenger transport service has the same meaning as in the *Passenger Transport Act 1994*;

20 *public passenger vehicle* has the same meaning as in the *Passenger Transport Act 1994*;

small item means a confectionary wrapper, cigarette packet, automatic teller machine statement, public transport ticket or similar item.

25 **237E—Depositing cigarettes etc**

(1) A person who deposits a cigarette on a public road, public place or open private place is guilty of an offence.

Maximum penalty:

(a) in the case of a lit cigarette—\$5 000;

30 (b) in the case of an unlit cigarette—\$2 500.

Expiation fee:

(a) in the case of a lit cigarette—\$160;

(b) in the case of an unlit cigarette—\$80.

35 (2) Subsection (1) does not apply in the case of a person who deposits a cigarette in a receptacle provided for that purpose.

(3) In this section—

cigarette includes—

(a) a cigar, pipe tobacco or other tobacco product or similar item; and

40 (b) a cigarette or cigar butt;

237F—Depositing advertising material

- (1) A person who deposits advertising material other than—
- (a) in a receptacle provided for the deposit of mail or newspapers; or
 - (b) under the door of any premises; or
 - (c) in accordance with any conditions prescribed by the regulations,

is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (2) A person who causes a person to deposit advertising material other than—

- (a) in a receptacle provided for the deposit of mail or newspapers; or
- (b) under the door of any premises; or
- (c) in accordance with any conditions prescribed by the regulations,

is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (3) Subsections (1) and (2) do not apply in the case of—

- (a) a newspaper prescribed by the regulations, or advertising material contained within a newspaper prescribed by the regulations; or
- (b) advertising material deposited by the owner or occupier of the premises; or
- (c) advertising material deposited with the express consent of the owner or occupier of the premises; or
- (d) advertising material deposited in prescribed circumstances.

237G—Posting bills

- (1) A person who, without lawful authority, posts a bill on a public road, public place, open private place, building or other structure or object is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (2) A person who, without lawful authority, causes a person to post a bill on a public road, public place, open private place, building or other structure or object is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (3) If a bill is posted in contravention of subsection (1), a person who distributed or authorised the distribution of the bill for posting is guilty of an offence unless that person proves that—

- (a) the person did not foresee and could not be reasonably expected to foresee the likelihood that the bill would be posted unlawfully; or
- (b) the person took reasonable precautions to ensure the bill would not be posted unlawfully.

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (4) In this section—

bill includes advertisement, poster, paper or similar item.

237H—Report by member of public

- (1) A person who sees a person commit an offence under this Division may, by notice in writing in a form approved by the Minister, inform the council in whose area the offence occurred of the commission of the offence.

- (2) A notice under subsection (1) must—

- (a) contain the date, approximate time and place of the offence; and
- (b) contain a description of the offence, including the nature of the litter and any information that may assist in identifying the offender; and
- (c) be signed by the complainant and include the complainant's full name and address.

- (3) A notice under subsection (1) (other than a notice that appears to have been given frivolously or vexatiously) may constitute grounds for the issuing of an expiation notice.

237I—Application of payments of expiation fees under this Division

- (1) An issuing authority is entitled to any expiation fee paid under the *Expiation of Offences Act 1996* pursuant to an expiation notice for an offence against this Division, or recovered on enforcement of such an expiation notice, issued by or on behalf of the issuing authority.

(2) In this section—

issuing authority, in relation to an expiation notice, means—

- 5 (a) if the expiation notice is given by an authorised person who is an authorised person due to the operation of section 237B—the responsible authority in relation to that authorised person; or
- (b) in any other case—the council by or on whose behalf the expiation notice is given.

237J—Compensation

10 If a person is convicted of an offence under section 237D or 237G, the court may order the convicted person to pay to the council, or to the owner or occupier of the property in relation to which the offence was committed, such amount of compensation for loss or damage caused as the court considers just.

8—Amendment of section 260—Appointment of authorised persons

Section 260—after subsection (7) insert:

- 15 (8) Subsections (3), (4) and (5) do not apply in the case of an authorised person who is an authorised person due to the operation of section 237B.
- 20 (9) In the case of an authorised person who is an authorised person due to the operation of section 237B, the reference in subsection (7) to the council will be taken to be a reference to the responsible authority in relation to that authorised person.

Schedule 1—Related amendment

25 Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Summary Offences Act 1953*

30 2—Repeal of section 48

Section 48—delete the section