

House of Assembly—No 112

As laid on the table and read a first time, 22 February 2024

South Australia

**Local Nuisance and Litter Control (Miscellaneous)
Amendment Bill 2024**

A BILL FOR

An Act to amend the *Local Nuisance and Litter Control Act 2016*, and to make related amendments to the *Liquor Licensing Act 1997*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Local Nuisance and Litter Control (Miscellaneous) Amendment Act 2024*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Local Nuisance and Litter Control Act 2016*

3—Amendment of section 3—Interpretation

(1) Section 3—after the definition of *authorised officer* insert:

business premises of a business includes—

- (a) the premises in which the business is conducted, or that constitute the business; and
- (b) an ancillary car park (or car parks) used by customers of the business; and
- (c) if the business premises are constituted of, or form part of, a shopping centre—the common areas of the shopping centre that are accessible to the public (including a car park for the shopping centre);

(2) Section 3, definitions of *class A hazardous litter* and *class B hazardous litter*—delete the definitions and substitute:

class A hazardous litter means domestic or commercial waste comprised of—

- (a) asbestos; or
- (b) material containing asbestos; or
- (c) any substance, material or thing of a kind prescribed by regulation; or
- (d) a combination of litter referred to in a preceding paragraph of this definition and any other litter;

class B hazardous litter means—

- (a) when disposed of onto land or into waters—
 - (i) live cigarettes or cigarette butts; or
 - (ii) used syringes; or
 - (iii) waste glass (whether or not broken); or
 - (iv) any substance, material or thing of a kind prescribed by regulation; or
 - (v) a combination of litter referred to in a preceding paragraph of this definition and general litter; and
- (b) when disposed of into waters—any disused or decommissioned vehicle, appliance or device or part of such a vehicle, appliance or device or any other structure or thing that an authorised officer reasonably suspects is being used, or is intended for use, in the waters as an artificial reef;

(3) Section 3, definition of *general litter*—delete the definition and substitute:

general litter means any solid or liquid domestic or commercial waste, and includes, without limitation—

- (a) cigarettes or cigarette butts; and
- (b) chewing gum; and
- (c) food or food scraps; and
- (d) beverage containers; and
- (e) packaging; and
- (f) clothing, footwear or other personal accessories or personal items; and
- (g) furniture; and
- (h) garden cuttings or clippings or other plant matter; and
- (i) garden landscaping material; and
- (j) dead or diseased animals; and
- (k) vehicles or vehicle parts; and
- (l) shopping trolleys; and
- (m) machinery or equipment used in farming or agriculture; and
- (n) demolition material (including, but not limited to, clay, concrete, rock, sand, soil or other inert mineralogical matter); and
- (o) building or construction material or equipment; and
- (p) any material or thing deposited (either directly or indirectly) into, or that otherwise enters, a stormwater management system (other than stormwater); and
- (q) any material or thing used or generated in the course of carrying on a prescribed activity of environmental significance; and
- (r) any substance, material or thing of a kind prescribed by regulation, but does not include hazardous litter;

hazardous litter means class A hazardous litter or class B hazardous litter;

(4) Section 3, definition of *litter*—delete the definition and substitute:

litter means general litter or hazardous litter;

(5) Section 3—after the definition of *road-related area* insert:

shopping centre means a group of retail business premises (whether or not other business premises are also present) that are—

- (a) promoted as, or generally regarded as constituting, a shopping centre, shopping mall, shopping court or shopping arcade; and
- (b) located in 1 building or in 2 or more buildings that are either adjoining or separated only by common areas or other areas owned by the owner of the premises;

stormwater management system means any infrastructure or equipment (including vegetated assets) used for collecting, containing, conveying or treating stormwater for the purposes of stormwater management;

surface waters means—

- (a) marine waters within the meaning of the *Environment Protection Act 1993*; and
- (b) naturally occurring inland waters; and
- (c) artificially created bodies of water or streams that are for public use or enjoyment;

(6) Section 3—after the definition of *vessel* insert:

waste has the same meaning as in the *Environment Protection Act 1993*;

waste transport business (category A) has the same meaning as in Schedule 1 clause 3(6) of the *Environment Protection Act 1993*;

waste transport business (category B) has the same meaning as in Schedule 1 clause 3(6) of the *Environment Protection Act 1993*;

waters means surface waters or underground waters.

4—Amendment of section 5—Interaction with other Acts

Section 5(5)—delete subsection (5) and substitute:

(5) This Act applies in relation to—

(a) the use of a vehicle for the purposes of, or in connection with, the conduct of the following:

- (i) a waste transport business (category A);
- (ii) a waste transport business (category B),

other than the use of that vehicle at or in connection with premises, works or facilities used for the purposes of undertaking a prescribed activity of environmental significance as authorised by an environmental authorisation within the meaning of the *Environment Protection Act 1993*; and

(b) the use of a road or road related area by a vehicle for the purposes of, or in connection with, the following prescribed activities of environmental significance as authorised by an environmental authorisation within the meaning of the *Environment Protection Act 1993*:

- (i) dredging;
- (ii) earthworks drainage.

5—Amendment of section 18—Causing local nuisance

(1) Section 18(1), penalty provision, (b)—delete "a natural person" and substitute:
an individual

(2) Section 18(2), penalty provision, (b)—delete "a natural person" and substitute:
an individual

(3) Section 18(2), expiation fee—delete the expiation fee and substitute:

Expiation fee:

(a) in the case of a body corporate—\$1 000;

(b) in the case of an individual—\$500.

6—Amendment of section 19—Exemptions from application of section 18

(1) Section 19(2)(a)—before "a site" insert:

subject to subsection (2a),

(2) Section 19(2)(c)—delete paragraph (c) and substitute:

(c) the fee fixed by the council pursuant to section 188(1)(g) of the
Local Government Act 1999.

(3) Section 19—after subsection (2) insert:

(2a) If the council is satisfied that any anticipated adverse effects from the
specified activity on the amenity value of the area concerned—

(a) are not reasonably able to be avoided; and

(b) are of a limited nature,

the council may waive the requirement to provide a site nuisance
management plan under subsection (2)(a).

(4) Section 19(3)—delete subsection (3) and substitute:

(3) Before making a declaration under this section, the council must,
unless subsection (2a) applies, be satisfied that the applicant's site
nuisance management plan adequately sets out the measures that the
person will take to prevent, minimise or address any anticipated
adverse effects from the specified activity on the amenity value of
the area concerned.

(5) Section 19—after subsection (4) insert:

(4a) The council may, on application by the holder of a declaration under
this section, extend the period for which the declaration operates for
such period as is specified by notice in writing.

(4b) An application for an extension under subsection (4a) must—

(a) be made in the manner and form determined by the council;
and

(b) be made before the period to be extended has expired; and

(c) be accompanied by any information in connection with the
application that the council may require (including a site
nuisance management plan if such a plan has not previously
been provided); and

(d) be accompanied by the fee fixed by the council pursuant to section 188(1)(g) of the *Local Government Act 1999*,
and may be made in relation to a declaration, the period of which has been extended by previous application under this section.

5 (6) Section 19(6)—delete subsection (6) and substitute:

(6) A declaration under this section has effect from the date specified in the declaration and remains in force according to its terms—

- (a) for a period as determined by the council to be reasonable in the circumstances and specified in the declaration; or
- 10 (b) until the declaration is revoked by the council under this section; or
- (c) if the period of its operation is extended by the council under this section—until the end of that period.

15 (7) Section 19(7)—after "variations" insert:
or extensions

7—Insertion of section 19A

After section 19 insert:

19A—Installation of designated device that results in local nuisance

20 (1) A person who, after the commencement of this section, installs a designated device, or causes a designated device to be installed, on premises in a fixed position such that the operation of the device results in local nuisance, is guilty of an offence.

Maximum penalty:

- 25 (a) in the case of a body corporate—\$10 000;
- (b) in the case of an individual—\$5 000.

Expiation fee:

- (a) in the case of a body corporate—\$500;
- (b) in the case of an individual—\$210.

30 (2) In any proceedings (criminal or civil) where it is alleged that a person contravened subsection (1), it will be a defence if it is proved that—

- (a) at the time the designated device was installed, the person did not foresee and could not reasonably be expected to have foreseen that installation of the device would, when operated, result in local nuisance; or
- 35 (b) the person who installed the designated device, or caused the designated device to be installed, did not determine the position in which the device was installed; or

- (c) the local nuisance resulting from the operation of the designated device was as a result of a defect in, or modification of, the device that occurred after the time of its installation.

5 (3) In this section—

designated device means—

- (a) an air conditioning unit; or
- (b) an external light.

8—Amendment of section 20—Person must cease local nuisance if asked

10 Section 20, expiation fee—delete the expiation fee and substitute:

Expiation fee:

- (a) in the case of a body corporate—\$500;
- (b) in the case of an individual—\$210.

9—Insertion of section 21A

15 Before section 22 insert:

21A—General duty to prevent or minimise litter—person carrying on business

- 20 (1) A person who carries on a business must take all reasonable and practicable measures to prevent or minimise litter that is caused by, or related to, the carrying on of the business.
- (2) Without limiting the generality of subsection (1), the duty includes a duty to prevent or minimise litter—
 - 25 (a) that is disposed of by customers of the business in contravention of this Division; and
 - (b) that escapes from a stormwater management system owned by, or under the management and control of, the business.
- (3) Failure to comply with the duty under this section does not of itself constitute an offence, but—
 - 30 (a) compliance with the duty may be enforced by the issuing of a litter abatement notice; and
 - (b) failure to comply with the duty will be taken to be a contravention of the Act for the purposes of section 48.
- (4) In this section—

business includes a business not carried on for profit or gain.

35 10—Amendment of section 22—Disposing of litter

- (1) Section 22(1), penalty provision, (a)(ii)—delete "a natural person" and substitute:
an individual

(2) Section 22(1), penalty provision, (b)(ii)—delete "a natural person" and substitute:
an individual

(3) Section 22(1), expiation fee—delete the expiation fee and substitute:

Expiation fee:

- 5 (a) for an offence involving the disposal of 50 litres or more of class B hazardous litter or general litter—
- (i) in the case of a body corporate—\$2 000;
 - (ii) in the case of an individual—\$1 000;
- 10 (b) for an offence involving the disposal of up to 50 litres of class B hazardous litter—
- (i) in the case of a body corporate—\$1 000;
 - (ii) in the case of an individual—\$500;
- 15 (c) for an offence involving the disposal of up to 50 litres of general litter—
- (i) in the case of a body corporate—\$500;
 - (ii) in the case of an individual—\$210.

(4) Section 22(5)—delete subsection (5)

11—Insertion of section 22A

After section 22 insert:

20 **22A—Recovery of costs of urgent clean up of litter from public place**

- 25 (1) If a council takes urgent action to clean up, from a public place, litter that the council considers to be a hazard, in circumstances where the identity of the person who disposed of the litter is not known, the council may, if that person is later identified, by notice in writing served on the person, require the person to pay to the council the reasonable costs and expenses incurred by the council in taking that action.
- 30 (2) For the purposes of subsection (1), the costs and expenses may include those reasonably incurred by the council in taking samples or in conducting tests, examinations, monitoring or analysis in relation to taking action under that subsection.
- 35 (3) An amount payable to the council in accordance with a notice under this section must be paid by the person within the period specified in the notice, being not less than 28 days from the date of the notice, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
- 40 (4) If an amount payable to the council is not paid in accordance with this section, the amount may be recovered as a debt by the council.

12—Amendment of section 23—Bill posting

(1) Section 23(2), penalty provision, (b)—delete "a natural person" and substitute:

an individual

(2) Section 23(2)—after the penalty provision insert:

Expiation fee: \$500.

(3) Section 23(5)—after the definition of *bill* insert:

property includes, in the case of a vehicle (other than a vessel), the land on which the vehicle is located.

13—Amendment of section 24—Litterer must remove litter if asked

Section 24, expiation fee—delete the expiation fee and substitute:

Expiation fee:

(a) in the case of a body corporate—\$500;

(b) in the case of an individual—\$210.

14—Insertion of sections 24A and 24B

After section 24 insert:

24A—Identification of shopping trolleys

A person who provides shopping trolleys for the use of customers in the course of a business carried on by the person must ensure that the shopping trolleys are marked with, or have securely attached to them, the following information:

(a) the trading name of the business carried on by the person;

(b) a contact telephone number, email address or QR code that may be used for the reporting of trolleys left in a place outside the business premises of the business;

(c) any other information prescribed by regulation.

Maximum penalty: \$5 000.

Expiation fee: \$500.

24B—Collection of shopping trolleys

(1) If—

(a) a person provides shopping trolleys for the use of customers in the course of a business carried on by the person; and

(b) the person is notified by the Minister or a council, or the person otherwise becomes aware, that a trolley provided by the person is located at a place outside the business premises of the business in circumstances where the trolley is, or may cause, a hazard,

the person must, immediately after receiving that notification or becoming so aware, ensure that the trolley is collected from that place.

Maximum penalty: \$10 000.

Expiation fee: \$1 000.

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(2) Without limiting the manner in which notification may be given for the purposes of subsection (1), if the trading name of a business is marked on or attached to a trolley, or a trolley is otherwise identified as belonging to a particular business, but the trolley does not include an address of the retail premises of the business in relation to which the trolley is provided, notification will be taken to have been given for the purposes of that subsection if the Minister or the council notifies the manager or another person in charge of the retail premises of the business located closest to the location of the trolley.

(3) Unless subsection (1) applies, a person who provides shopping trolleys for the use of customers in the course of a business carried on by the person must ensure that any such shopping trolley located at a place outside the business premises of the business is collected within 3 business days of the person being notified, or otherwise becoming aware, of the location of the trolley.

Maximum penalty: \$5 000.

Expiation fee: \$500.

15—Amendment of section 30—Nuisance and litter abatement notices

(1) Section 30(2)(f)(ii)—delete subparagraph (ii) and substitute:

25 (ii) subject to subsection (2a), keeping a specified area around business premises free from litter; or

(iii) without limiting a preceding subparagraph, the management of shopping trolleys in relation to business premises; and

(2) Section 30—after subsection (2) insert:

30 (2a) If a plan of action requires an area to be specified for the purposes of paragraph (f)(ii), the area specified must not—

(a) in the case of litter comprised of shopping trolleys—exceed 1km; and

(b) in the case of any other litter—exceed 100 metres.

35 (2b) Without limiting any other provision of this section, a plan of action prepared by a person for the purposes of subsection (2)(f) may be required, as specified in the notice, to include the following:

40 (a) requirements regarding the provision, maintenance and cleaning of litter prevention equipment such as bins and stormwater management systems;

(b) if more than 20 shopping trolleys are provided in the course of, or in relation to, a business carried on by the person at the business premises (including a business involving the ownership or management of a shopping centre)—1 or more of the following requirements with respect to the management of the shopping trolleys (the *shopping trolley management requirements*):

(i) the current name and contact details (including telephone number and email address) of the manager of the business or their delegate who will be responsible for liaising with local government representatives about shopping trolley management;

(ii) a requirement to provide and maintain a list of the current contact details (including telephone number and email address) for—

(A) the business premises of the business (and if more than 1 premises is located in a council area, for each such premises); and

(B) the person or persons who hold senior management positions in the business;

(iii) requirements relating to the provision of sufficient resources for shopping trolley collection services for the business to enable compliance with the plan of action requirements relating to trolley collection;

(iv) requirements relating to the making and keeping of records in relation to notifications of shopping trolleys located outside the business premises of the business received by the business and—

(A) the subsequent collection of trolleys; or

(B) in the case of no trolley being found at the reported location, details of the time and date at which the trolley collector attended the location,

and requirements for the provision of those records to the Minister or council;

(v) requirements relating to the notification to persons who may use the trolleys—

(A) to not remove shopping trolleys from, or leave shopping trolleys outside, the business premises of the business including, but not limited to, the provision of indoor and outdoor signage to that effect; and

(B) regarding the penalties that may apply for the removal of shopping trolleys from, or leaving shopping trolleys outside, the business premises of the business;

5 (vi) requirements relating to the provision of shopping trolley return bays at exit points to the business premises of the business and the signage of such trolley return bays;

10 (vii) requirements relating to the provision of information regarding the trolley collection schedules and trolley collection routes (including maps or diagrams) of the business to the Minister or council;

15 (viii) any other requirements reasonably included to promote or secure compliance with any requirements of this Act or preventing any future contravention of this Act.

(2c) A notice that imposes a requirement for a person to prepare a plan of action under this section may include a requirement that the person comply with the requirements included in the plan of action to the satisfaction of the Minister or council.

(3) Section 30(5)—delete "or (3)"

(4) Section 30(9), penalty provision, (b)—delete "a natural person" and substitute:
an individual

25 (5) Section 30(9), expiation fee—delete the expiation fee and substitute:
Expiation fee:

- (a) in the case of a body corporate—\$1 000;
- (b) in the case of an individual—\$500.

16—Insertion of section 30A

30 After section 30 insert:

30A—Registration of nuisance abatement notice in relation to land

(1) If—

- (a) a nuisance abatement notice has been issued under this Part;
and
- (b) the notice was issued in relation to an activity carried out on land, or requires a person to take action on or in relation to that land,

40 the relevant authority may apply to the Registrar-General for registration of the notice in relation to that land.

- (2) An application under this section must—
- (a) define the land to which it relates; and
 - (b) comply with any requirements imposed by the Registrar-General for the purpose of this section.
- 5 (3) The Registrar-General must, on due application under subsection (2), register the notice in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as the Registrar-General thinks fit.
- 10 (4) The relevant authority must, in accordance with the regulations, provide to the Registrar-General notice of any variation to a notice registered under this section.
- (5) A notice registered under this section (as varied from time to time) is binding on each owner and occupier from time to time of the land.
- 15 (6) If an owner or occupier of the land referred to in subsection (5) ceases to own or occupy the land (as the case may be), then they must, as soon as reasonably practicable, notify the relevant authority in writing of the name or address of the new owner or occupier.
- Maximum penalty: \$2 000.
- 20 (7) The Registrar-General must, on application by the relevant authority, cancel the registration of a notice in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as the Registrar-General thinks fit.
- 25 (8) The relevant authority must apply to the Registrar-General for cancellation of the registration of a notice under this section in relation to land—
- (a) on revocation of the notice; or
 - (b) on full compliance with the requirements of the notice; or
 - 30 (c) if action has been taken under this Part to carry out the requirements of the notice—on payment of any amount recoverable by the relevant authority under this Part in relation to the action so taken.
- 35 (9) The relevant authority must, as soon as is reasonably practicable, notify an owner or occupier of the relevant land by notice in writing if—
- (a) a notice is registered under subsection (3); or
 - (b) a notice of the variation of a notice is registered under subsection (4); or
 - 40 (c) the cancellation of the registration of a notice is given effect under subsection (8).

(10) In this section—

relevant authority means—

- (a) in relation to a notice issued by the Minister—the Minister;
and
- 5 (b) in relation to a notice issued by a council—the council; and
- (c) in relation to a notice issued by 2 or more councils
jointly—each of those councils jointly.

17—Amendment of section 31—Action on non-compliance with notice

Section 31—after subsection (7) insert:

- 10 (8) If litter or a substance, material or thing is removed from premises in
taking action under this section, the Minister or the council (as the
case requires) may sell or dispose of it as the Minister or council
thinks appropriate.
- 15 (9) If litter, or a substance, material or thing is sold under subsection (8),
the Minister or the council must apply any proceeds of sale as
follows:
 - (a) firstly, in payment of the costs of and incidental to the sale;
 - (b) secondly, in payment of the costs of and incidental to the
20 removal and custody of the litter, substance, material or
thing;
 - (c) thirdly, in payment of any other reasonable costs and
expenses incurred by the Minister or council in taking action
under this section (which payment must be taken into
account for the purposes of subsection (5));
 - 25 (d) fourthly, in payment of the balance to the owner of the litter,
substance, material or thing.
- (10) For the avoidance of doubt—
 - 30 (a) the *Unclaimed Goods Act 1987* does not apply to, or in
respect of, any litter, substance, thing or material that is
removed from premises under this section; and
 - (b) subsections (8) and (9) do not limit or derogate from
Chapter 11 Part 3 or section 297 of the *Local Government
Act 1999*.

18—Amendment of Schedule 1—Meaning of local nuisance (section 17)

- 35 (1) Schedule 1, Part 1, clause 1, definition of *waste*—delete the definition
- (2) Schedule 1, Part 1, clause 1, definition of *waste transport vehicle*—delete ", each
within the meaning of the *Environment Protection Act 1993* Schedule 1 Part A"
- (3) Schedule 1, Part 2, clause 4(f)—delete paragraph (f)

(4) Schedule 1, Part 3, clause 5(k)—delete paragraph (k) and substitute:

(k) noise or behaviour in respect of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of the *Liquor Licensing Act 1997*;

5 (5) Schedule 1, Part 3, clause 5(l)—delete paragraph (l)

Schedule 1—Related amendments

Part 1—Amendment of *Liquor Licensing Act 1997*

1—Amendment of section 106—Complaint about noise etc emanating from licensed premises

10 (1) Section 106, heading—delete "etc" and substitute:

or behaviour

(2) Section 106(1)—delete subsection (1) and substitute:

15 (1) Subject to this section, if noise or behaviour emanating from persons at, or making their way to or from, or entertainment at, licensed premises is unduly offensive, annoying or disturbing to a person who resides, works or worships in the vicinity of the licensed premises, a complaint may be lodged with the Commissioner under this section.

(3) Section 106(3a)—delete subsection (3a) and substitute:

20 (3a) If a complaint is lodged with the Commissioner under this section, the Commissioner must cause a copy of the complaint to be served on the licensee of the licensed premises to which the complaint relates prior to any conciliation proceedings or hearing being held in relation to the complaint.

(4) Section 106(6)(b)(i) and (ii)—delete "activity," wherever occurring

25 (5) Section 106(6)(b)(iv) and (v)—delete subparagraphs (iv) and (v)

(6) Section 106—after subsection (8) insert:

30 (8a) Despite any other provision of this section, if the Commissioner or the Court considers that it is appropriate that the subject matter of a complaint be dealt with by another person or body, the Commissioner or the Court (as the case requires) may, at any time, refer the matter to the other person or body.