

South Australia

Local Nuisance and Litter Control (Miscellaneous) Amendment Bill 2022

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

This Act may be cited as the *Local Nuisance and Litter Control (Miscellaneous) Amendment Act 2022*.

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—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;

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—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 plan under subsection (2)(a).

(3) 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*.

(4) Section 19(3)(b)—before "the applicant's" insert:

unless subsection (2a) applies,

(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 of a declaration 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.

(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

(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.

(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

(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:

(a) in the case of a body corporate—\$10 000;

(b) in the case of an individual—\$5 000.

(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—

5 (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

10 (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

15 (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.

(3) In this section—

designated device means—

(a) an air conditioning unit; or

(b) an external light.

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

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.

25 **9—Insertion of section 21A**

Before section 22 insert:

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

30 (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—

35 (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—
- (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.

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:
- (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;
 - (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;
 - (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), definition of **general litter**—after paragraph (k) insert:
(ka) shopping trolleys;
- (5) Section 22(5), definition of **general litter**—after paragraph (o) insert:
(oa) any material or thing deposited (either directly or indirectly) into, or that otherwise enters, a stormwater management system (other than stormwater);

11—Insertion of section 22A

After section 22 insert:

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

- 5 (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.
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- 15 (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.
- 20 (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.
- (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

- 25 (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.
- 30 (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:

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

14—Insertion of section 24A

After section 24 insert:

24A—Identification of shopping trolleys

5 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:

- 10 (a) the trading name of the business carried on by the person;
- (b) a contact telephone number 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: \$210.

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

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

- 20 (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:

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

- 25 (a) in the case of litter comprised of shopping trolleys—exceed 1km; and
- (b) in the case of any other litter—exceed 100 metres.

(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:

- 30 (a) requirements regarding the provision, maintenance and cleaning of litter prevention equipment such as bins and stormwater management systems;
- 35 (b) if shopping trolleys are provided in the course of, or in relation to, a business carried on by the person (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*):

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- (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—
 - 10 (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;
 - 15 (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 to ensure the collection of shopping trolleys located outside the business premises of the business—

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 - (A) where the trolleys pose a hazard—immediately following notification of their location;
 - 25 (B) in any other case—within 72 hours of notification of their location, or as otherwise agreed by the Minister or council;
 - (v) 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—

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 - (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,

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and requirements for the provision of those records to the Minister or council;
 - 40 (vi) requirements relating to the notification to persons who may use the trolleys—

- 5 (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
- 10 (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;
- (vii) 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;
- 15 (viii) 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;
- 20 (ix) any other requirements reasonably included to promote or secure compliance with any requirements of this Act or preventing any future contravention of this Act.
- 25 (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:
- 30 an individual
- (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.

35 16—Insertion of section 30A

After section 30 insert:

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

- (1) If—
- 40 (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,
- the relevant authority may apply to the Registrar-General for registration of the notice in relation to that land.
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- (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.
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- (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.
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- (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.
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- (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.
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- (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.
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- (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
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- (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.
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- (9) An owner or occupier of the relevant land must be notified, 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

- (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
- (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:

- (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.

- (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 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));
- (d) fourthly, in payment of the balance to the owner of the litter, substance, material or thing.

(10) For the avoidance of doubt—

- (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)

(1) Schedule 1, Part 2, clause 4(f)—delete paragraph (f)

(2) 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*;

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

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

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- (1) Section 106, heading—delete "etc" and substitute:
or behaviour

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

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- (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:

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- (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.

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

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

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

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- (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.