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at 14 November 1996

WESTERN AUSTRALIA

LITTER ACT 1979

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WESTERN AUSTRALIA

LITTER ACT 1979

AN ACT to make provision for the abatement of litter, to establish, incorporate and confer powers upon the Keep Australia Beautiful Council (W.A.), and for incidental and other purposes.

PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Litter Act 1979*¹.

Commencement

2. Subject to this Act the provisions of this Act shall come into operation on such date or dates as is or are respectively fixed by proclamation.¹

[3. *Repealed by No. 49 of 1981 s.3.*]

Effect on other laws

4. (1) The provisions of this Act are complementary to and not in derogation of the provisions of any other law of the State.

(2) Without limiting the generality of subsection (1), this Act shall not be construed so as to prevent any person from being prosecuted under any other law of the State for an offence punishable by this Act, or from being liable under any other law of the State to any other or higher penalty or punishment than is provided for the offence by this Act.

(3) Nothing in this section affects the operation of section 11 of the *Sentencing Act 1995*.

(4) In this section “**law of the State**” means an Act or any regulations, rules, local laws, by-laws or statute having effect by virtue of an Act.

[Section 4 amended by No. 14 of 1996 s.4 No. 78 of 1995 s.67.]

Interpretation

5. (1) In this Act, unless the contrary intention appears —

“appointed area” means an area set aside by a public authority on land under its control as an area for the deposit of litter;

“authorized officer” means a person to whom subsection (1) of section 26 applies;

“bill” means any poster, placard, handbill, sticker, or other material or object manufactured, printed, drawn or produced for the purpose of advertising or promoting any thing, cause, function, event or occasion of any kind;

“Chairman” means the Chairman of the Council;

“Department” means a Department of the Public Service of the State;

“land” means any land in the open air;

“litter” includes —

(a) all kinds of rubbish, refuse, junk, garbage or scrap; and

(b) any articles or material abandoned or unwanted by the owner or the person in possession thereof,

but does not include dust, smoke or other like products emitted or produced during the normal operations of any mining, extractive, primary or manufacturing industry;

“member of the Council” means a member appointed under section 9;

“post”, in relation to a bill, means affix the bill by any means to an object;

“prescribed” means prescribed in the regulations;

“private land” means land that is used and held in accordance with the requirements of section 32;

“public authority” means a Department or State instrumentality, a local government within its district, and any other person or body, whether corporate or not, who or which under the authority of any Act is charged with the carrying out of any duty whilst acting in the discharge of that duty;

“public place” means any thoroughfare, as defined in the *Local Government Act 1995*, and any other land which the public are allowed to use;

“supporting member” means a person, body or organization affiliated with the Council under section 13;

“the Council” means the Keep Australia Beautiful Council (W.A.) established by section 6;

“the Fund” means the Keep Australia Beautiful Council (W.A.) Fund established under section 18;

“waters” includes —

- (a) any inland waters, whether running or still, permanent or temporary, or natural or artificially created; and
- (b) any part of the seas within the jurisdiction of the State.

(2) For the purposes of this Act litter is deposited on land or on or in waters if —

- (a) it is placed, put, left, dropped or thrown there; or

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- (b) it is allowed to fall there or be carried there by the action of wind or water, or both.

[Section 5 amended by No. 18 of 1986 s.4; No. 6 of 1996 s.4; No. 14 of 1996 s.4.]

**PART II — THE KEEP AUSTRALIA BEAUTIFUL
COUNCIL (W.A.)**

Establishment of Keep Australia Beautiful Council

6. (1) A body corporate with perpetual succession is hereby established under the name "Keep Australia Beautiful Council (W.A.)".

(2) The Council shall have a common seal and all courts, judges and persons acting judicially shall take judicial notice of the common seal of the Council and shall presume that it was duly affixed.

(3) The provisions of the First Schedule shall have effect with respect to the constitution and proceedings of the Council.

Objects of the Council

7. (1) Subject to this Act, the objects and functions of the Council are those set out in the Second Schedule.

(2) The Governor may, by Order in Council, at the request of the Council amend by adding to, taking away from, varying or modifying any of the objects or functions contained in the Second Schedule.

Powers

8. The Council may do all acts and things that may be necessary to be done to enable it to achieve its objects and perform its functions and, in particular and in addition to any other powers conferred on it by this Act, the Council may in its corporate name —

- (a) acquire, hold and dispose of real and personal property;

- (b) accept any gift, whether by will or *inter vivos*, of any real or personal property or any interest or estate therein, or disclaim the benefit of any such gift;
- (c) sue and be sued;
- (d) do and suffer all that bodies corporate may do and suffer.

Membership of the Council

9. (1) The Council shall consist of 15 members appointed by the Minister of whom —

- (a) one shall be appointed on the nomination of the body known as The Soft Drink Manufacturers' Association (W.A.);
- (b) one shall be appointed on the nomination of The Confederation to represent the brewing industry;
- (c) one shall be appointed on the nomination of the body known as The Packaging Council of Australia (Western Australian Division);
- (d) one shall be appointed on the nomination of The Confederation to represent manufacturers of cans;
- (e) one shall be appointed on the nomination of The Confederation to represent manufacturers of glass;
- (f) one shall be appointed on the nomination of The Confederation to represent manufacturers of paper products;
- (g) one shall be appointed on the nomination of the chief executive officer of the Education Department as defined in the *Education Act 1928*;

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- (h) one shall be appointed on the nomination of the Secretary for Local Government;
- (i) one shall be appointed on the nomination of the Permanent Head of the Department through which the *Conservation and Land Management Act 1984* is administered;
- (j) one shall be appointed on the nomination of the body known as the Local Government Association of Western Australia;
- (k) one shall be appointed on the nomination of the body known as the Country Shire Councils' Association of W.A.;
- (ka) one shall be appointed on the nomination of the body known as the Trades and Labor Council of Western Australia;
- (kb) one shall be appointed on the nomination of the body known as The Conservation Council of Western Australia (Incorporated);
- (kc) one shall be appointed to represent the interests of persons as consumers;
- (l) one shall be a person with special knowledge of or experience in either litter prevention or environmental matters, or both.

(2) A nomination referred to in paragraph (a), (b), (c), (d), (e), (f), (j), (k), (ka) or (kb) of subsection (1) shall take the form of a panel of the names of at least three persons each of whom is willing to accept appointment as a member of the Council.

(3) An officer mentioned in paragraph (g), (h) or (i) of subsection (1) may, if he so wishes, nominate himself for appointment as a member of the Council pursuant to that paragraph.

(4) Subject to clause 1 of the First Schedule a member of the Council shall hold office for such period not exceeding three years as is specified in the instrument of his appointment and is eligible for re-appointment.

(5) The Minister shall cause notice of appointments to the respective offices of members of the Council to be published in the *Gazette*.

(6) In this section "**The Confederation**" means the body known as The Confederation of Western Australian Industry (Incorporated).

[Section 9 amended by No. 18 of 1986 s.5²; No. 7 of 1988 s.21; No. 22 of 1996 s.16 (7).]

Chairman of Council

10. (1) The Minister shall appoint a member of the Council, not being a member who is an officer in the Public Service of the State, to be the Chairman of the Council.

(2) The office of Chairman becomes vacant if —

- (a) the person holding the office resigns the office by notice in writing to the Minister;
- (b) the person holding the office ceases to be a member of the Council; or
- (c) the Minister declares the office to be vacant.

(3) There shall be paid to the Chairman, from moneys standing to the credit of the Fund, such remuneration and allowances as the Governor determines.

[Section 10 amended by No. 49 of 1996 s.64.]

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Deputy Chairman

11. (1) At the first meeting of the Council and thereafter at the first meeting of the Council held after the 30th day of June in each year the members of the Council shall elect from among their number a Deputy Chairman.

(2) Subject to subsection (3) a person elected to the office of Deputy Chairman of the Council shall hold office until the next election for that office is held under subsection (1), but is eligible for re-election.

(3) The office of Deputy Chairman of the Council becomes vacant if —

- (a) the person holding the office resigns the office by notice in writing to the Chairman;
- (b) the person holding the office ceases to be a member of the Council;
- (c) the person holding the office is appointed to be the Chairman.

(4) Where a casual vacancy occurs in the office of Deputy Chairman the members of the Council shall elect one of their number to hold the office until the next election is held under subsection (1).

Effect of appointments

12. Acceptance of or acting in any office under section 9, 10 or 11 by any person does not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that person, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

[Section 12 amended by No. 32 of 1994 s.19.]

Supporting members

13. (1) Any person, body or organization may become affiliated with the Council as a supporting member.

(2) The Council shall make such arrangements as are necessary —

- (a) to ensure that supporting members have the opportunity to participate in the work of the Council; and
- (b) to enable supporting members to meet from time to time to discuss matters relating to the objects and functions of the Council and pass on their views to the Council.

Committees

14. (1) The Council may from time to time —

- (a) constitute Committees by appointing any number of persons to be members of the Committees, and abolish a Committee so constituted by dismissing all the members of the Committee;
- (b) assign names to the Committees so constituted;
- (c) subject to the approval of the Minister, delegate to a Committee such of its functions, duties, discretions, and powers, except this power of delegation, for such time and subject to such conditions as the Council determines and the Committee shall exercise and perform the functions, duties, discretions, and may exercise the powers, so delegated to it;
- (d) dismiss any member of a Committee and appoint another person to the office of the dismissed member; and

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(e) appoint additional members to any Committee.

(2) Any member of the Council, supporting member or other person may be a member of a Committee but the Council shall —

(a) appoint at least one member of the Council to be a member of each Committee; and

(b) appoint as Chairman of a Committee, a member of the Council appointed to that Committee pursuant to paragraph (a) of this subsection.

(3) The Chairman of the Council shall be *ex officio* a member of each Committee.

(4) Where the Chairman of the Council is unable to be present at a meeting of a Committee the Deputy Chairman of the Council may attend that meeting in place of the Chairman and act for the Chairman thereat.

(5) A delegation under subsection (1) is revocable at will and the delegation does not prevent the exercise of performance by the Council of any of its functions, duties, discretions or powers under this Act.

Staff

15. (1) The Council may, with the approval of the Minister, appoint such officers and engage such employees as are necessary to enable it to efficiently achieve its objects and perform its functions and may supervise, control, suspend and dismiss such officers and employees.

(2) Persons appointed or engaged under subsection (1) may be employed on a full time or part time basis.

(3) Subject to any relevant award or industrial agreement the terms and conditions of employment of persons appointed or

engaged under subsection (1), including the salary or wages payable, are such terms and conditions as the Council, on the recommendation of the Minister for Public Sector Management and with the approval of the Minister, determines.

(4) Part 3 of the *Public Sector Management Act 1994* does not apply to or in relation to persons appointed or engaged under subsection (1).

(5) Notwithstanding anything in this section, to the extent that there is in the case of a person who is appointed under subsection (1) to be an officer and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978* an inconsistency between this Act and that Act that Act shall prevail.

[Section 15 amended by No. 113 of 1987 Schedule 2;
No. 32 of 1994 s.19.]

Secondment of public servants

16. (1) The Council may by arrangement with the Minister concerned and upon such terms and conditions as may be mutually arranged with such Minister, make use, either full time or part time of —

- (a) the services of any officer or employee employed in the Public Service of the State or in a State instrumentality or otherwise in the service of the Crown in this State; or
- (b) any facilities of a Department or of a State instrumentality.

(2) An arrangement under subsection (1) with regard to the services of an officer or employee does not affect his rights under the *Public Service Act 1978* or any other Act applying to him as a public servant.

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Professional assistance

17. The Council may, with the approval of the Minister, engage and remunerate for their services such professional persons or agents as the Council considers may be necessary for the achievement or performance of any of its objects or functions.

PART III — FINANCE AND ACCOUNTS

Fund

18. (1) For the purposes of this Act there shall be established a fund to be called the “Keep Australia Beautiful Council (W.A.) Fund”.

(2) All moneys from time to time belonging to the Fund shall be —

- (a) credited to an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) paid into and placed to the credit of an account at such bank, approved by the Treasurer, as the Council may from time to time decide,

and the account is to be called the Keep Australia Beautiful Council (W.A.) Fund Account.

(3) The Fund shall consist of —

- (a) moneys from time to time appropriated by Parliament for the purposes of this Act;
- (b) voluntary contributions from manufacturers and distributors of products that —
 - (i) are capable of becoming litter; or
 - (ii) are distributed in packaging or containers capable of becoming litter,

or from agents of such manufacturers and distributors;

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- (c) gifts of money made for the purposes of this Act, and the proceeds of other gifts made for those purposes;
- (d) the income derived from the investment of money forming part of the Fund;
- (e) the proceeds of disposal of property;
- (f) moneys from time to time derived by the Council from subscriptions and from penalties;
- (g) any other moneys that may lawfully be received by the Council.

[Section 18 amended by No. 49 of 1996 s.57.]

Council may invest money forming part of the Fund

19. Where any money forming part of the Fund is not immediately required for the purposes of this Act, the Council may, with the approval of the Treasurer of the State invest it in any investments authorized by law as those in which trust funds may be invested.

Application of money in the Fund

20. (1) Subject to subsection (2) the Council may use and apply money standing to the credit of the Fund for or towards any of its objects, or in the exercise of any of its functions, and in particular may use and apply that money for all or any of the following purposes —

- (a) the payment of the expenses of administering this Act;
- (b) the payment of the general administrative expenses of the Council;

- (c) the payment of salaries and wages to its officers and employees and the remuneration of professional persons and agents engaged by it;
- (d) the making of grants to persons or organizations approved by the Council to enable or assist those persons or organizations to undertake studies or implement programmes in connection with the objects and functions of the Council.

(2) Where gifts of money, bequests, or other gifts, have been made upon conditions for the purposes of this Act, the Council shall use or apply money representing those gifts and bequests in accordance with the conditions upon which they were made.

*[Section 20 amended by No. 98 of 1985 Schedule 1;
No. 49 of 1996 s.64.]*

Application of *Financial Administration and Audit Act 1985*

21. The provisions of the Financial Administration and Audit Act 1985 regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Council and its operations.

[Section 21 inserted by No. 98 of 1985 Schedule 1.]

[22. Repealed by No. 98 of 1985 Schedule 1.]

PART IV — PREVENTION OF LITTER

Littering

23. Any person who deposits litter, or causes litter to be deposited, on any land or on or into any waters commits an offence unless the litter is deposited —

- (a) on private land by consent;
- (b) in an appointed area;
- (c) in a place or receptacle set aside or provided for that purpose; or
- (d) on land adjacent to private land by arrangement with, or at the invitation of, a public authority with a view to the litter being collected and removed by the public authority.

Penalty: \$1 000.

[Section 23 amended by No. 6 of 1996 s.5.]

Breaking glass etc.

24. Any person who breaks any glass, metal or glass earthenware, or causes any glass, metal or earthenware to be broken, on any land or into any waters, commits an offence unless the glass, metal or earthenware, as the case may be, is broken —

- (a) on private land by consent; or
- (b) in an appointed area with the consent of the public authority by which the area was set aside.

Penalty: \$1 000.

[Section 24 amended by No. 6 of 1996 s.6.]

Bill posting

24A. (1) Any person who leaves or posts a bill on any building, fence, furniture, pillar, post, screen, tree, structure, wall or other object on or adjacent to a public place or vacant land commits an offence unless the bill is left or posted with the consent of the owner or occupier of the object on which the bill is left or posted.

Penalty: \$1 000.

(2) Any person who leaves or posts a bill on or in any unoccupied vehicle in a public place commits an offence unless the bill is left or posted with the consent of the owner or person in charge of the vehicle.

Penalty: \$1 000.

(3) A person who leaves a bill in a letter box or similar receptacle for mail does not commit an offence under subsection (1).

[Section 24A inserted by No. 6 of 1996 s.7.]

Counselling or procuring bill posting

24B. (1) Any person who incites, causes, counsels or procures some other person to leave or post a bill on any building, fence, furniture, pillar, post, screen, tree, structure, wall or other object on or adjacent to a public place or vacant land in contravention of section 24A (1) or on or in any unoccupied vehicle in a public place in contravention of section 24A (2) commits an offence.

Penalty: \$10 000.

(2) Notwithstanding any other enactment, the penalty in subsection (1) applies whether the offender is a natural person or a body corporate.

[Section 24B inserted by No. 6 of 1996 s.7.]

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Offences by bodies corporate

24C. (1) Where a body corporate commits an offence under section 24B and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate, or any person who was purporting to act in any such capacity, that person, as well as the body corporate, commits that offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

[Section 24C inserted by No. 6 of 1996 s.7.]

Provision of litter receptacles

25. (1) This section applies to any area of land that is frequented by the public for or in connection with business, commercial, recreational or other purposes and whether on payment of a fee or not.

(2) A public authority in whose district or area of jurisdiction an area of land to which this section applies is situated may by notice in writing served on a person who is the owner of, or has the control of that area —

- (a) require that person to provide and maintain on that area such number of litter receptacles of a type specified in the notice as is specified in the notice; and
- (b) give such directions as the public authority thinks fit in order to ensure that those receptacles are placed in positions where they will be most effective.

(3) A public authority may, in writing, request the Council to exercise the powers conferred on the public authority by subsection (2) in relation to an area of land specified in the request and the Council may exercise those powers in terms of that request and, where it does so, references in this section to the public authority shall be read and construed as references to the Council.

(4) A notice served under subsection (2) in respect of an area of land may be —

- (a) replaced or varied by a subsequent notice served under that subsection on the owner or person who has the control of that area;
- (b) rescinded by notice in writing served on the owner or person who has the control of that area.

(5) A notice served under subsection (2) shall come into force on such date (being a date not less than 60 days after the service of the notice as is specified therein unless, before that date, an appeal in respect of any requirement or direction in the notice has been lodged pursuant to subsection (6).

(6) A person who is dissatisfied with any requirement or direction in a notice served under subsection (2) may appeal in writing to the Minister in respect of the requirement or direction setting out in detail the grounds upon which the appeal is made and the Minister shall consider the appeal and may confirm, vary or rescind the notice.

(7) Written notification of the decision of the Minister on an appeal pursuant to subsection (6) shall be given to the appellant and the public authority and where the Minister has confirmed or varied a notice the notification shall specify a date on which the notice or the notice as so varied, as the case may be, shall come into force.

(8) The decision of the Minister on an appeal pursuant to subsection (6) shall be final.

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(9) Where any requirement or direction in a notice as in force under this section in respect of an area of land is not being complied with, the owner or person who has the control of that area is guilty of an offence.

Penalty: \$1 000 together with a daily penalty of \$100 in respect of each day on which the offence continues.

(10) Where a person provides litter receptacles in accordance with the requirements of a notice served under subsection (2) he shall forthwith advise the public authority to that effect.

(11) A person who has provided litter receptacles in accordance with the requirements of a notice served under subsection (2) shall ensure that those receptacles are emptied as often as is necessary or as is required by the public authority.

[Section 25 amended by No. 6 of 1996 s.8.]

**PART V — ENFORCEMENT, PROCEEDINGS AND
PENALTIES**

Authorized officers

26. (1) For the purposes of this Act an authorized officer is —

- (a) any member of the Police Force;
 - (b) any person appointed as such pursuant to subsection (2) within the area of jurisdiction entrusted to him by the appointment;
 - (c) within the district of a local government, any person who is —
 - (i) a member of the council of the local government;
 - (ii) an employee of the local government; or
 - (iii) an honorary inspector appointed by the local government under section 27AA.
- (2) The Minister may appoint —
- (a) any officer or employee of the Council appointed or engaged under subsection (1) of section 15;
 - (b) any officer or employee whose services the Council makes use of by arrangement under subsection (1) of section 16;
 - (c) any person who is or acts in the office of —
 - (i) an inspector, under the *Environmental Protection Act 1971*;

- (ii) a forest officer, under the *Forests Act 1918*;
- (iii) a wildlife officer, under the *Wildlife Conservation Act 1950*;
- (iv) a ranger, under the *National Parks Authority Act 1976*;
- (v) a member of the staff of The Western Australian Museum constituted by the *Museum Act 1969*;
- (vi) an inspector or honorary warden, under the *Waterways Conservation Act 1976*;
- (vii) a fisheries officer referred to in the *Fish Resources Management Act 1994*;
- (viii) a bush fire liaison officer, under the *Bush Fires Act 1954*; or
- (ix) an inspector, under the *Western Australian Marine Act 1982*;

or

- (d) any person who holds or acts in an office of a public authority being an office prescribed in the regulations,

to be an authorized officer for the purposes of this Act either in respect of the whole of the State or any part thereof defined in the appointment.

(3) A person holding office as an authorized officer by virtue of paragraph (c) of subsection (1) —

- (a) has within the district in respect of which he holds office the duties of and powers of an authorized officer under this Act, and may exercise those powers within that district;

- (b) may exercise the powers conferred on him by this Act in relation to any person whom he has reason to believe is concerned in a contravention of this Act notwithstanding that such person is not then within the district in respect of which he holds office if that person was pursued from that district or is known to have been in that district at the time of the contravention.

(4) A person who is appointed as an authorized officer pursuant to subsection (2) —

- (a) has within the area of jurisdiction entrusted to him by the appointment the duties and powers of an authorized officer under this Act, and may exercise those powers within that area;
- (b) may exercise the powers conferred upon him by this Act in relation to any person whom he has reason to believe is concerned in a contravention of this Act notwithstanding that such person is not then within the area of jurisdiction entrusted to him if that person was pursued from that area or is known to have been in that area at the time of the contravention; and
- (c) shall be issued with a certificate of his appointment as an authorized officer in the prescribed form, evidencing the area of jurisdiction entrusted to him under this Act, which he shall, on reasonable demand, produce for inspection by any person.

[Section 26 amended by No. 49 of 1981 s.4; No. 53 of 1994 s.264; No. 24 of 1995 s.55; No. 14 of 1996 s.4.]

Powers of authorized officers

27. (1) An authorized officer may require a person whom he finds committing or whom he reasonably suspects to be

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committing or to have committed an offence against this Act to state his full name and usual place of residence.

(1a) Any owner of a vehicle and any person to whom for the time being the possession or control of a vehicle may be entrusted shall, if required by an authorized officer, give any information which it is in his power to give, which may lead to the identification of any person who was driving or who was in charge or control of the vehicle at the time that, or at about the time that, an offence against this Act is alleged to have been committed.

Penalty: \$1 000.

(2) An authorized officer who finds a person contravening section 23, 24 or 24A may order that person —

- (a) to remove the material the subject of the offence from the land or waters; or
- (b) to deposit the material the subject of the offence in the nearest place or receptacle set aside or provided for the deposit of litter,

within such time as the authorized officer may direct.

(3) A person shall not —

- (a) fail to comply with a requisition directed to him under subsection (1) or (2) by an authorized officer; or
- (b) in response to a requisition directed to him under subsection (1) by an authorized officer, give any information that is false or misleading.

Penalty: \$1 000.

[Section 27 amended by No. 18 of 1986 s.6; No. 6 of 1996 s.9.]

Offences in respect of vehicles

27A. (1) Where an offence against section 23 or 24 consists of the depositing of litter or causing litter to be deposited on any land or on or into any waters from a vehicle or the breaking of or causing to be broken any glass, metal or glass earthenware on any land or on or into any waters from a vehicle and the authorized officer investigating the offence is unable to establish who committed the offence, the driver or person in charge of the vehicle is to be taken to have committed the offence and may be proceeded against and is punishable accordingly.

(2) Notwithstanding subsection (1), the driver or person in charge of a vehicle is not to be taken to have committed an offence by virtue of that subsection if, not later than 10 days after the date of service of a summons on that person for that offence, he or she supplies to the authorized officer who instituted the proceeding a statement in writing, on oath or by statutory declaration, to the satisfaction of the authorized officer, verifying that some other person committed the offence and —

- (a) supplying the name of that other person and the address at which that person can be located; or
- (b) if that name and address are not known to the person, verifying that the person does not know and cannot by reasonable diligence find out that other person's name and address.

(3) If a prosecution is instituted against a person named in a statement supplied under subsection (2), a copy of the statement must be served with the summons.

(4) Where a copy of a statement is served under subsection (3), the statement may be endorsed as if it were a summons under section 57 of the *Justices Act 1902*, and service may be proven by that endorsement in the same manner.

(5) Subject to subsection (3), the production of a statement supplied under subsection (2) is evidence of the facts stated in it

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and in the absence of evidence to the contrary is sufficient evidence of those facts.

(6) Subsection (1) does not prejudice or affect the liability of a person by whom an offence was actually committed to be proceeded against and punished, except that where either that person or a person taken to have committed the offence by virtue of subsection (1) has been convicted of an offence, the other of them ceases to be liable under this Act for the offence.

[Section 27A inserted by No. 6 of 1996 s.10.]

Honorary inspectors

27AA. A local government may appoint a person to be an honorary inspector to assist in the enforcement of regulations relating to the securing of loads carried by vehicles.

[Section 27AA inserted by No. 14 of 1996 s.4.]

Court may order offender to remove litter etc.

28. (1) Where a person is convicted of an offence against section 23, 24, 24A or 24B, the court may instead of or in addition to imposing any penalty order the offender —

- (a) to clean up and remove the material the subject of the offence within a time specified in the order and under the directions and to the satisfaction of a person nominated in the order; and
- (b) in default of his complying with the order of the court, to pay such penalty (in addition to any penalty already imposed) not exceeding \$1 000 as the court thinks fit.

(2) Where an order made under subsection (1) is complied with to the satisfaction of the person nominated in the order that

person shall give or send to the offender a written statement to that effect.

(3) Where an offender fails to comply with an order made under subsection (1) any justice may, upon application of the person nominated in the order, issue a summons requiring the offender to show cause before the court that made the order why the penalty imposed by the order should not be enforced.

(4) Upon the hearing of a summons issued under subsection (3) the court —

(a) may extend the time for compliance with the order made under subsection (1) and in that event the provisions of this section shall apply as if the extended time were the time appointed by the order;

(b) may make such order as it thinks fit.

[Section 28 amended by No. 6 of 1996 s.11.]

Court may order offender to pay costs of removing litter etc.

29. (1) Where a person is convicted of an offence against section 23 or 24 or fails to comply with an order made under section 28 (1) made in respect of a conviction for an offence against section 23 or 24, the court may instead of or in addition to imposing any penalty order the offender to pay to the owner or occupier or person or authority having control or management of the land or waters where the offence was committed such sum as it considers reasonable for the cleaning up and removal of the material the subject of the offence.

(1a) Where a person is convicted of an offence against section 24A or 24B, or fails to comply with an order under section 28 (1) made in respect of a conviction for an offence against section 24A or 24B, the court may instead of or in addition to imposing any penalty order the offender to pay to the

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owner or occupier or person or authority having control or management of the building, fence, furniture, pillar, post, screen, tree, structure, wall, other object or unoccupied vehicle where or on which a bill or bills were posted in consequence of the offence such sum as it considers reasonable for the cleaning up and removal of the bill or bills.

(2) An amount ordered to be paid under subsection (1) or (1a) may be recovered as a judgment debt in a court of competent jurisdiction.

[Section 29 amended by No. 92 of 1994 s.23; No. 6 of 1996 s.12.]

Penalties exacted by way of notice

30. (1) Where an authorized officer has reason to believe that a person has committed any such offence against this Act as is prescribed for the purposes of this section the authorized officer may serve on that person a notice, in the prescribed form (in this section called an **“infringement notice”**) informing the person that, if he does not wish to have a complaint of the alleged offence heard and determined by a court, he may pay to an officer specified in the notice, within the time therein specified, the amount of the penalty prescribed for the offence, if dealt with under this section.

(2) An infringement notice may be served on an alleged offender personally or by posting it to him within 30 days after the occurrence giving rise to the allegation of an offence.

(3) A person who receives an infringement notice may decline to be dealt with under the provisions of this section and, where he fails to pay the prescribed penalty within the time specified in the notice or within such further time as may, in any particular case, be allowed, he is deemed to have declined to be dealt with under those provisions.

(4) An infringement notice may, whether or not the prescribed penalty has been paid, be withdrawn, at any time within 28 days after the service of the notice, by the sending of a notice, in the prescribed form, to the alleged offender at his last known place of residence or business, advising the alleged offender that the infringement notice has been withdrawn, and, in that event, the amount of any prescribed penalty that has been paid shall be refunded.

(4a) A withdrawal notice sent under subsection (4) shall be signed by a person appointed in writing to withdraw infringement notices by the public authority on behalf of which the infringement notice was served.

(4b) For the purposes of subsection (4a) an infringement notice served by an authorized officer of a class referred to in column 1 of the Third Schedule shall be regarded as having been served on behalf of the public authority referred to in column 2 of that Schedule opposite the reference to that class of authorized officers.

(5) Where a prescribed penalty has been paid pursuant to an infringement notice and the notice has not been withdrawn as provided by subsection (4) proceedings shall not be brought against any person with respect to the offence alleged in the notice.

(6) The payment of a penalty pursuant to an infringement notice shall, for the purposes of this Act, constitute a conviction of an offence, but shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the occurrence by reason of which the infringement notice was given.

[Section 30 amended by No. 48 of 1981 s.5; No. 18 of 1986 s.7.]

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Appropriation of penalties

31. (1) Penalties for offences against this Act recovered in proceedings instituted by or on behalf of a local government shall be paid to the local government.

(2) Penalties for offences against this Act recovered in proceedings instituted by or on behalf of a public authority that has a fund, shall be paid into that fund.

(2a) Penalties for offences against this Act recovered in proceedings instituted by or on behalf of a public authority that does not have a fund but administers or uses any moneys paid to or collected by it, shall be paid to that authority to be administered or used by it as part of those moneys.

(2b) For the purposes of subsections (1), (2) and (2a) proceedings instituted by an authorized officer of a class referred to in column 1 of the Third Schedule shall be regarded as having been instituted on behalf of the public authority referred to in column 2 of that Schedule opposite the reference to that class of authorized officers.

(3) Penalties for offences against this Act recovered in proceedings other than proceedings referred to in subsection (1), (2) or (2a) shall be credited to the Fund.

(4) **“Proceedings”** as used in this section includes proceedings by way of infringement notice under section 30.

[Section 31 amended by No. 49 of 1981 s.6; No. 14 of 1996 s.4; No. 49 of 1996 s.64.]

Proof of consent

32. Where by way of defence to any prosecution for an offence under this Act it is alleged that any act was performed on private

land by consent that defence shall not be taken to have been established unless —

- (a) it is shown that the land in question was —
 - (i) land (not being land comprised in a reserve pursuant to section 29 of the *Land Act 1933*, whether or not vested in or leased to any person or body under that Act) which is alienated from the Crown for any estate or interest;
 - (ii) land the subject of any conditional purchase agreement or of any lease from the Crown;
 - (iii) land comprised in a reserve under any Act and leased for any purpose; or
 - (iv) other land, in respect of which a right of occupation or use is held by any person or body not being a right conferred principally for mining purposes,

and that the act was performed in that place at the material time with the specific prior consent of a lawful occupier or the owner of that land; or

- (b) the court is otherwise satisfied that the act was performed in a place the property or use of which is vested in a person or body who or which consented to the act being performed there, not being land of the kind referred to in paragraph (a) of this section.

PART VI — REGULATIONS AND RULES

Regulations

33. (1) The Governor may make such regulations, as are contemplated by this Act and such other regulations, not inconsistent with this Act, as he considers are necessary or expedient for the proper administration of this Act and for the control of litter generally.

(2) Without limiting the generality of subsection (1) regulations may be so made —

- (a) for the protection of litter receptacles from damage or defacement;
- (b) prohibiting or regulating the distribution of handbills, leaflets, vouchers, coupons, cards or other publicity material of a similar kind in any public place or on vacant land and the leaving or posting of any such material on any building, or structure on or adjacent to a public place or vacant land or on or in any vehicle in a public place;
- (c) regulating the disposal of —
 - (i) boxes, packets, bags, bottles, tins and other containers;
 - (ii) papers; and
 - (iii) things of no use or no further use to their possessor,

so that their disposal will not contribute to the increase of litter nor the pollution of the environment within the meaning of the *Environmental Protection Act 1971*;

- (d) recommending types of litter receptacles for the purposes of section 25 and, without limiting the generality of the foregoing, recommending —
 - (i) the capacity, shape and design of such receptacles;
 - (ii) colours and distinguishing symbols or motifs for use on such receptacles;
 - (iii) materials for use in the construction or manufacture of such receptacles;
- (e) prohibiting the deposit of litter of a specified class in litter receptacles of a specified class;
- (f) regulating the covering and securing of loads on vehicles;
- (g) prescribing offences for the purposes of section 30 by setting out the offences or by reference to the provisions creating the offences; and
- (h) prescribing for the purposes of section 30 in respect of any offence prescribed for the purposes of that section —
 - (i) a penalty not exceeding \$200; or
 - (ii) different penalties, none of which exceeds \$200, according to the circumstances by which the offence is attended.

(3) The regulations may prescribe penalties, not exceeding a fine of \$1 000 in respect of a breach of any of the regulations.

(4) Regulations may be made —

- (a) so as to apply generally or in a specified class of case, or specified classes of cases, at all times or at a

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specified time or specified times, or throughout the State or in a specified part or specified parts of the State;

- (b) so as to require a matter affected by them to be in accordance with a specified requirement, or as approved by, or to the satisfaction of, a specified person or body, or class of person or body, and so as to delegate to or confer upon a specified body a discretionary authority; and
- (c) so as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things may be exempted from their provisions either wholly or to such extent as is specified.

(5) Where in relation to regulations made under this Act the expression “**specified**” is used, the expression, unless the context requires otherwise, means specified in the regulations.

[Section 33 amended by No. 6 of 1996 s.13.]

Rules

34. The Council may make rules not inconsistent with this Act or the regulations for or with respect to —

- (a) regulating the affairs, business and management of the Council;
- (b) the holding of meetings of supporting members and proceedings at the meeting;
- (c) regulating the admission, resignation and expulsion of supporting members and the types and classification of those members and the levying of subscriptions on those members;

- (d) all matters that are considered necessary or convenient by the Council to be prescribed by rules for the purpose of giving effect to this Act, not being matters for and with respect to which regulations may be made.

PART VII — TRANSITIONAL

Commencement and interpretation

35. (1) This Part shall come into operation on the date on which section 6 comes into operation.

(2) In this Part “**the Association**” means the association incorporated under the *Associations Incorporation Act 1895*, on the 14th day of October 1971 by the name of Keep Australia Beautiful Council (W.A.).

Dissolution of former Association

36. (1) On the coming into operation of this Part the Association is, by force of this section dissolved and the Commissioner for Corporate Affairs shall cancel the Certificate of Incorporation issued to the Association on the 14th day of October 1971 under the *Associations Incorporation Act 1895*.

(2) The Council shall deliver to the Commissioner for Corporate Affairs the Certificate of Incorporation referred to in subsection (1), when requested by him so to do, for the purpose of the Certificate being cancelled under that subsection.

(3) A reference —

(a) in a law of the State; and

(b) in any document,

in force immediately before the coming into operation of this Part, to the Association shall be read, deemed and taken to refer to the Council.

Property, proceedings, etc.

37. (1) All real and personal property and every right and interest therein that immediately before the date of the coming into operation of this Part was vested in the Association —

- (a) shall vest in and belong to the Council for the purposes of this Act; and
- (b) shall be held by it subject to the conditions or trusts on which it was held immediately before that date.

(2) All rights accruing or accrued to the Association in respect of any property vested in the Council by virtue of this section —

- (a) are vested in the Council; and
- (b) may be enforced against the Council.

(3) All contracts, agreements and undertakings made by the Association and existing immediately before the date of the coming into operation of this Part, have effect as contracts, agreements and undertakings by and with the Council and may be enforced by and against the Council accordingly.

(4) Any legal or other proceedings that might but for this section, have been continued or commenced by or against the Association under its corporate name may be continued or commenced by or against the Council under its corporate name.

Membership

38. (1) The persons who were members of the Association immediately before the date of the coming into operation of this Part shall by force of this section become and, subject to the rules, remain supporting members of the Council.

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(2) In determining the subscriptions payable by supporting members to whom subsection (1) applies credit shall be given for subscriptions paid to the Association in respect of the financial period current at the date of the coming into operation of this Part.

(3) No subscriptions shall be payable by a supporting member who was a life member of the Association.

SCHEDULES

FIRST SCHEDULE

[Section 6]

**Provisions Relating to the Constitution and
Proceedings of the Council**

Casual vacancies

1. (1) A member of the Council may resign his office by notice in writing delivered to the Minister.

(2) The body or officer by which or by whom a member of the Council was nominated may, by notice in writing to the Minister, withdraw the nomination of that member and thereupon the office of that member becomes vacant.

(3) If a member of the Council —

- (a) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) becomes permanently incapable of performing the duties of his office; or
- (c) is removed from office by the Minister on the grounds of neglect of duty, misbehaviour or incompetence,

the office of that member becomes vacant and he is not eligible for re-appointment.

Deputies

2. (1) The Minister may appoint persons to be deputies of the several members of the Council.

(2) The provisions of subsections (1), (2), (3), (4) and (6) of section 9 that apply to and in relation to a member of the Council apply to and in relation to the appointment of a deputy of that member.

(3) The nomination panel used for the purpose of appointing a member of the Council may also be used for the purpose of appointing his deputy.

(4) The deputy of a member of the Council is, in the event of the absence of that member from a meeting of the Council, entitled to attend that meeting and, when so attending, is deemed to be a member of the Council and has all the powers, functions and duties of such a member.

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(5) If at any time a member of the Council ceases to hold office before the expiration of the period of his appointment a person who was immediately prior thereto the deputy of that member is, until the vacancy in that office of member is filled by the appointment of another member of the Council or until the expiration of three months from the date that the member ceased to hold office, whichever is the lesser time, entitled to attend any meeting of the Council and when so attending is deemed to be a member of the Council and has all the powers, functions and duties of such a member.

Who to preside at meetings

3. (1) The Chairman shall preside at all meetings of the Council at which he is present.

(2) The Deputy Chairman shall preside at all meetings of the Council at which the Chairman is not present and in the absence of both the Chairman and the Deputy Chairman from any such meeting, the members of the Council present shall appoint one of their number to preside at that meeting.

Meetings

4. (1) The first meeting of the Council shall be convened by the Minister and thereafter, subject to subclause (2) of this clause, meetings shall be held at such times and places as the Council determines.

(2) A special meeting of the Council may at any time be convened by the Chairman or, in his absence, the Deputy Chairman and the Chairman or, in his absence, the Deputy Chairman shall call a special meeting whenever requested to do so in writing by four members of the Council.

(3) Not less than 3 days' notice of every special meeting, and of the business to be transacted thereat, shall be given to each member of the Council and no business, other than that specified in that notice, except with the consent of all members of the Council present and voting at the meeting, shall be transacted at that meeting.

Quorum

5. No business shall be transacted at any meeting of the Council unless more than one-half of the members of the Council are present thereat for the whole time during which the business is transacted.

Voting

6. Any question arising at a meeting of the Council shall be determined by a majority of the members of the Council present and

voting and where the votes cast on any question are equally divided the question shall be declared to be negatived.

Minutes

7. The Council shall cause accurate minutes to be kept of its proceedings at its meetings.

Pecuniary Interest

8. (1) Any member of the Council who has a direct or indirect pecuniary interest in any matter that is being considered or is about to be considered at a meeting of the Council shall as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to those present at the meeting and that disclosure shall be recorded in the minutes of the meeting.

(2) Where a member of the Council makes a disclosure under subclause (1) of this clause in relation to a matter and a majority of the members present at the meeting determine by motion that the nature of the pecuniary interest disclosed is such that the member should take no part in the consideration of that matter, the member shall not be present during any deliberation of the Council with respect to that matter.

Validity of acts

9. An act or proceeding of the Council shall not be invalid in consequence of there being any vacancy in the office of a member at the time of the act or proceeding or in consequence of there being some defect or irregularity in the appointment of a person purporting to be a member or in the appointment of a person purporting to be the deputy of a member.

Common seal

10. (1) The form of the common seal of the Council and all other matters relating to the seal shall, subject to this clause, be from time to time determined at a duly constituted meeting of the Council.

(2) The common seal shall not be used except upon the order of the Council.

(3) Where the common seal is affixed to an instrument it shall be so affixed in the presence of the Chairman or the Deputy Chairman of the Council and one other member of the Council and the instrument shall be signed by the Chairman or Deputy Chairman and member in whose presence the common seal was so affixed.

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Procedure where none prescribed

11. To the extent that it is not prescribed by this Act or rules made by the Council the Council shall determine its own procedure.

SECOND SCHEDULE

[Section 7]

Objects and Functions of the Council

- (a) To educate members of the public in, and to awaken, stimulate, encourage and maintain the interest of members of the public in, and to promote public knowledge of, the correct disposal of waste items.
- (b) To foster and encourage the appreciation of clean and well-kept cities and countryside.
- (c) To safeguard the character and beauty of the Australian landscape through the prevention of litter.
- (d) To preserve and improve the appearance of our environment in the schools, in factories, shops and offices, in parks, beaches and recreation places and along the roadside by the prevention of litter.
- (e) To make recommendations and submit proposals to the Minister from time to time with respect to regulations to be made under this Act.
- (f) To promote litter prevention through publicity of all kinds, design and distribution of litter receptacles and encouragement of suitable legislation.
- (g) To promote awareness of, and encouragement of, litter recycling.
- (h) To maintain continuous and effective campaigns against the disfigurement of the landscape by litter and to encourage a responsible community attitude to cleanliness in all public places.
- (i) To study available research, and development in the field, regarding litter control, removal, disposal and recycling and to study methods for the implementation of such research and development.
- (j) To co-operate, where considered desirable by the Council with other organizations within the State or elsewhere on questions relating to all forms of pollution and generally to work for a clean healthy environment.
- (k) To serve as the co-ordinating agency between organizations seeking to aid the anti-litter effort.
- (l) To liaise with local governments with a view to ensuring that the provisions of this Act are enforced in the districts of those local governments.

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- (m) To co-operate with local governments to accomplish co-ordination of local anti-litter efforts.
- (n) To encourage, organize and co-ordinate voluntary local anti-litter campaigns seeking to focus the attention of the public on programmes to control and remove litter.
- (o) To take appropriate measures to bring the provisions of this Act to the attention of the public.
- (p) To do such other acts and things as are conducive to the prevention and control of litter.

[Second Schedule amended by No. 14 of 1996 s.4.]

THIRD SCHEDULE

[Sections 30 and 31]

Institutions of Proceedings

Column 1	Column 2
Class of authorized officer serving infringement notice or instituting proceedings	Public authority on behalf of which notice is served or proceedings instituted
Members of the Police Force	The Commissioner of Police
Members of the council of, or employees or honorary inspectors of, a local government	That local government
Officers or employees of the Council or officers or employees whose services the Council makes use of	The council
Inspectors under the <i>Environmental Protection Act 1971</i>	The Environmental Protection Authority
Forest Officers under the <i>Forests Act 1918</i>	The Conservator of Forests
Wildlife officers under the <i>Wildlife Conservation Act 1950</i>	The Director of Fisheries and Wildlife
Rangers under the <i>National Parks Authority Act 1976</i>	The National Parks Authority of Western Australia
Members of the staff of The Western Australian Museum	The Western Australian Museum
Inspectors or honorary wardens under the <i>Waterways Conservation Act 1976</i>	The Management Authority constituted under that Act in relation to the management area in respect of which the authorized officer is exercising his powers
Fisheries officers referred to in the <i>Fish Resources Management Act 1994</i>	The Executive Director referred to in the <i>Fish Resources Management Act 1994</i>
Bush fire liaison officers under the <i>Bush Fires Act 1954</i>	The Bush Fires Board

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Column 1	Column 2
Class of authorized officer serving infringement notice or instituting proceedings	Public authority on behalf of which notice is served or proceedings instituted
Inspectors under the <i>Western Australian Marine Act 1982</i>	The Manager of the Department of Marine and Harbours
Persons holding or acting in a prescribed office of a public authority	That public authority

[*Third Schedule inserted by No. 49 of 1981 s.7; amended by No. 53 of 1994 s.264; No. 24 of 1995 s.55; No. 14 of 1996 s.4.*]

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NOTES

¹ This reprint is a compilation as at 14 November 1996 of the *Litter Act 1979* and includes the amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Litter Act 1979</i>	81 of 1979	11 December 1979	9 May 1980 (see <i>Gazette</i> 9 May 1980 p.1446)	
<i>Litter Amendment Act 1981</i>	49 of 1981	16 September 1981	Section 5 (b) and (c): 20 November 1981 (see <i>Gazette</i> 20 November 1981 p.4718); balance: on assent	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see <i>Gazette</i> 30 June 1986 p.2255)	
<i>Litter Amendment Act 1986</i>	18 of 1986	25 July 1986	Section 5: 20 March 1987 (see <i>Gazette</i> 20 March 1987 p.949); balance: 22 August 1986 (see section 2)	
<i>Acts Amendment (Public Service) Act 1987, section 32</i>	113 of 1987	31 December 1987	16 March 1988 (see <i>Gazette</i> 16 March 1988 p.813)	
<i>Acts Amendment (Education) Act 1988, section 21</i>	7 of 1988	30 June 1988	8 July 1988 (see <i>Gazette</i> 8 July 1988 p.2371)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Public Sector Management) Act 1994, Part 4</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	
<i>Fish Resources Management Act 1994, section 264</i>	53 of 1994	2 November 1994	1 October 1995 (see <i>Gazette</i> 29 September 1995 p.4649)	
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994, Part 12</i>	92 of 1994	23 December 1994	1 January 1995 (see section 2 and <i>Gazette</i> 30 December 1994 p.7211)	
<i>Aboriginal Heritage Amendment Act 1995, section 55</i>	24 of 1995	30 June 1995	1 July 1995 (see <i>Gazette</i> 30 June 1995 p.2781)	
<i>Sentencing (Consequential Provisions) Act 1995, section 67</i>	78 of 1995	16 January	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	
<i>Litter Amendment Act 1996</i>	6 of 1996	24 May 1996	20 July 1996 (see section 3 and <i>Gazette</i> 19 July 1996 p.3455)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Education Amendment Act 1996, section 16 (7)</i>	22 of 1996	11 July 1996	11 July 1996 (see section 2 (1))	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Financial Legislation Amendment Act 1996, sections 57 and 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2 (1))	

² Section 5 (2) of the *Litter Amendment Act 1986* (Act No. 18 of 1986) reads as follows —

“ (2) The member of the Council appointed under section 9 (1) (i) of the principal Act and holding office immediately before the coming into operation of this section ceases to hold office upon the coming into operation of this section. ”