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**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

CRIMES (BILL POSTING) AMENDMENT BILL 2008

EXPLANATORY STATEMENT

**Circulated by authority by
Mr Jon Stanhope MLA
Minister for Territory and Municipal Services**

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Overview

The *Crimes (Bill Posting) Amendment Bill 2008* (the Bill) proposes to amend the *Crimes Act 1900* (the Act) to provide additional offences in relation to illegal bill posting on private and public property.

The Bill addresses the ongoing problem of illegal bill-posting in two ways. First, it proposes to extend the operation of the existing strict liability offence against marking private or public property in section 120 of the Act to include the unlawful affixing of paper or placards to such property. The existing infringement notice scheme (established under the *Magistrates Court (Crimes Infringement Notices) Regulation 2008* (the Regulation) for offences under section 120 of the Act) would, as a result of this amendment, also be applicable to the unlawful affixing of paper and placards to private or public property and would also be subject to the limits already placed on that infringement notice scheme in the Regulation.

Secondly, the Bill proposes to create a new statutory duty directed at the promoters of events to take reasonable practicable steps to ensure their event is promoted without contravening section 120 of the Act. The Bill then proposes to make it an offence for such a promoter to recklessly fail to comply with the duty.

Notes on Clauses

Clause 1 Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

This clause explains that the proposed Act will commence on a day fixed by the Minister. This method of commencement has been chosen to allow for a period of time to raise the public's awareness of the new provisions.

Clause 3 Legislation Amended

This clause is a formal provision to identify that the legislation to be amended by this Bill is the *Crimes Act 1900* (the Act).

Clause 4 Interpretation for div 6.3 Section 115 (1), new definitions

This clause inserts a new definition of "clean promotion duty" into section 115(1) of the Act. It also moves two existing definitions from 119(3) to this section, to accord with current drafting principles.

Clause 5 Defacing premises Section 119(3)

This clause omits section 119(3) of the Act as the definitions formerly in this section now appear in section 115(1) – see clause 4 of this Bill.

Clause 6 Substitution of a new section 120 and insertion of new sections 121, 121A and 121B

This clause replaces the existing section 120 of the Act with a new section 120 and inserts new sections 121 – 121B into the Act.

New section 120

The effect of the new section 120 is to broaden the operation of the offences already contained in the section. Section 120 currently deals with the marking of private or public property without the consent of the owner or occupier (in the case of private property), or unlawfully (in the case of public property.) The new section broadens the operation of the offences to include the affixing of placards or paper to such property.

The existing section was a strict liability offence and this continues with the new version of the offence. The penalty (10 penalty units) remains unchanged from the existing provision.

The existing infringement notice scheme (established under the *Magistrates Court (Crimes Infringement Notices) Regulation 2008* (the Regulation) for offences under section 120 of the Act) would, as a result of this amendment, also be applicable to the affixing of paper and placards to private or public property without the consent of the owner or occupier (in the case of private property), or unlawfully (in the case of public property.) The existing limits placed on the issuing of relevant infringement notices, as set out in the Regulation would continue to apply.

A further discussion on section 120 of the Act can be found in the explanatory statement to the *Crimes Amendment Act 2008* (A2008-6), which inserted the provision in the Act.

The government considers that the extension of the strict liability offence in section 120 as contemplated by this amendment is warranted, as the offence is only concerned with the conduct described, and not any degree of moral blameworthiness.

The government further considers that the amendment does not unduly infringe individuals' right to freedom of expression, as protected by section 16 of the *Human Rights Act 2004* on the following grounds:

First, the provision does not provide a blanket ban on all bill-posting. The government has provided locations, such as public notice boards and information pillars, where advertisements, posters and placards can be affixed without fear of prosecution.

The nature of the content of most placards should be considered. Most placards which are currently illegally affixed are advertisements for events or entertainment venues and are commercial in nature. It is a form of advertising where the business taking the commercial benefit from the advertisement shifts some of the costs associated with its advertising from themselves to private property owners or the government. Further many of the businesses enjoying the commercial benefit of their illegally posted advertisements are likely to be corporations, rather than individuals.

Alternative means of expression are available – and more effective at letting interested parties know about events and venues – such as electronic social networking, SMS phone messaging, internet advertising; all of which can now be accessed by mobile telephone.

The cost of removal of posters and placards and the cost of damage that can be caused to property, which are borne by property owners (in the case of private property) or the government (in the case of public property) should also be taken into account. Advertisements affixed to heritage listed buildings have the additional potential to cause damage to fragile structures or components and can detract from the heritage values which heritage registration is intending to protect.

The glues used to affix placards, when indiscriminately painted onto surfaces, or splashed onto the ground, quickly become discoloured with dirt and in the case of starch based adhesives, can attract vermin.

New sections 121, 121A and 121B

New sections 121-121B are directed towards persons promoting events as part of a business or undertaking. Section 121 establishes that such people have a duty to ensure that the relevant event is promoted cleanly by taking precautions. The section assumes that the event is promoted cleanly unless section 120 has been contravened— see section 121(3). It is not necessary to convict a person of a breach of section 120 to establish that section 120 has been contravened.

The provision does not extend to people organising the distribution of “community notices”, such as lost pet notices, although a person affixing such notices on property without consent could still be prosecuted under section 119 or 120 of the Act.

The effect of the section is to establish a duty on event promoters to take precautions to ensure that section 120 is not contravened in promoting their event.

Section 121A explains how a person with a duty under section 121 can take precautions to cleanly promote their event. Essentially these involve the promoter taking reasonable steps to identify the risk of contravention of section 120 in relation to the promotion of the event, eliminating that risk, or, if that is not possible, minimising the risk of contravention.

Section 121B then creates an offence of recklessly failing to comply with the clean promotion duty established under section 121. The maximum penalty is 100 penalty units. The mental element of “recklessly failing” in the offence is considered appropriate, given the requirements and procedures set out in section 121A.

Clause 7 Dictionary, new definitions

This clause adds references to the definitions found in section 115(1) to the dictionary at the end of the Act.