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

PUBLIC UNLEASED LAND BILL 2012

EXPLANATORY STATEMENT

**Presented by
Shane Rattenbury MLA
Minister for Territory and Municipal Services**

Introduction

This explanatory statement relates to the *Public Unleased Land Bill 2012* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The *Public Unleased Land Bill 2012* replaces and repeals the *Road and Public Places Act 1937* (the Act). A name change is necessary as ‘public place’ will soon become a defined term under the *Legislation Act 2001*. The definition does not align with the use of the term in the context of public unleased land.

The *Public Unleased Land Bill 2012* seeks to modernise the current legislative regime that regulates the use of public land. The bill revamps the permit and approval system for the use of public land, providing a broad framework which allows for administrative arrangements that can support and promote the object of the bill which is facilitating the use of public unleased land while ensuring that the amenity and natural value of public spaces is not diminished.

The current Act presents a range of administrative difficulties. In the lead up to the centenary of Canberra celebrations and the increase in the number of public events on public land, a contemporary scheme that effectively balances the free use of public spaces for activities such as enjoying a picnic or playing a game of informal sport, with the need for effective regulation of public spaces for specific events is required. The bill aims to ensure a fair balance for at times competing uses and the protection of the amenity and natural value of public unleased land.

The primary decision-maker under the bill is the director-general. The director-general can delegate his or her power to other officers under the Public Sector Management Act 1994.

The bill provides, under Part 3, a definition of use of land to be applied in relation to the permitting and licencing of activities on public unleased land. The Government acknowledges that the definition of use of land included in the Bill is, and has to be, very broad given the wide range of activities that may need to be captured in managing and protecting the amenity and natural value of the land. To strengthen the Bill and provide clarity, the Bill also provides that the Minister can declare that an activity is, or is not, covered by Part 3. The intention behind this power is to ensure the fair regulation of the

land and to help provide additional certainty for members of the public given the scope of the definition. The declaration is a disallowable instrument.

While many people and corporations who use public unleased land under permit arrangements will not be substantially affected by changes to the bill, there are a number of key reforms which will impact on-going permit-holders.

The permit system will now allow for the transfer of permits to a new permit-holder. This reform has been sought by businesses which use unleased public land on an ongoing basis such as for outdoor seating or the display of goods such as motor vehicles. A permit can be transferred with the sale of a business on application by the permit-holder if the new permit-holder is a suitable person to hold a permit.

The term of the public unleased land permit has been extended to two years from the current 12 month term. This will provide certainty for business and reduce the administrative burden in renewing a permit on an annual basis.

There is greater scope for the decision maker to place conditions on the holding of a permit. This will free up the permit system to allow permits to be granted that in the past may not have been granted because of an inability by the decision maker to place conditions on a case by case basis. It is not the intention that the ability to place conditions on permits will result in prescriptive or onerous conditions and it is intended that these will only be put in place to ensure that the permitted activities are consistent with the objectives of the Act. The decision to apply conditions to a permit is a reviewable decision.

There is now discretion for a decision maker not to renew a permit. The former legislation made renewal mandatory even when there had been a change in circumstances. This has proved problematic for permit-holders and for the enforcement of permits where there has been, for example, safety concerns generated by changed circumstances. The intention is to ensure that permits are renewed as a matter of course where the person remains a suitable person to hold a permit and the activity remains a suitable activity.

The bill also provides, in addition to indemnity, the capacity for the Territory to seek a financial assurance from permit-holders where this is reasonably necessary. Many activities in public places create wear and tear on infrastructure and can damage property and land. Events held in parks where there are underground watering systems for example, can damage these systems when large objects are placed or moved around. In the past such damage has often been repaired at a cost to the community. It is appropriate that permit-holders provide financial assurances that can be called upon to repair damage without the Territory needing to recover costs through the courts. While financial assurances will not be limited to commercial operators, it is not the intention of the Government to disadvantage the not-for-profit or charity sector by seeking financial assurances from all permit-holders. Each permit application will be considered on its merits and opportunity provided for consultation about conditions such as the application of a financial assurance. Additionally further criteria for imposing conditions may be developed by the Minister to clarify the operation of financial assurances.

The reformed legislation includes a clearer framework for the permit system. It is intended that the detailed administrative arrangements will be set out in policy and procedure which

will be developed in consultation with stakeholders. It is not intended that the permit system be a policing system for the use of public unleased land. Many activities will not require permits and it is only those **uses** or activities that exclude some or all members of the public from the place that may require a permit (see definition in clause 41). Guidance on when a permit is required will be contained in policy and procedure developed to support the permit system (in addition to the instrument making power discussed above).

The enforcement mechanisms have been reviewed and authorised officers created under the bill. Authorised officers are provided with a number of powers including the power to give directions to people using a public place. Authorised officers under the bill have a range of template powers provided to ACT officers who are authorised under Territory legislation with regulatory powers.

All of the offences included in the bill are suitable as infringement notice offences. In anticipation of a new *Magistrates Court (Public Unleased Land) Penalty Infringement Notices) Regulation* the bill introduces a number of strict liability offences. A prerequisite for an infringement notice is a strict liability offence. A discussion on the appropriateness of strict liability offences is included below.

Strict Liability Offences

The offences under this bill are strict liability offences. A strict liability offence under section 23 of the *Criminal Code 2002* means that a fault element is not required to be proved for the commission of an offence. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences have a specific defence of mistake of fact. Subclause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

This is a regulatory bill and people and companies who undertake work, interfere or use public unleased land under an approval or permit will be aware of their responsibilities and obligations in relation to the approval or permit.

Compliance with the provisions of the bill is important to ensure the safety of the community and the amenity and protection of public unleased land. In this bill, in all instances of strict liability offences, a person is provided with notice of the action required to comply with the law and opportunity to comply before an offence can be found. Where the public may be subject to a strict liability offence under this bill, for example in using closed roads (clause 13) or failing to comply with a direction to leave a permitted place (clause 97), notice is provided through signage or warning issued by an authorised person.

The penalty units for all strict liability offences in the bill are within the acceptable range for a strict liability offence. Justification for those offences with relatively higher penalty units is provided in detail under the relevant clause.

A discussion of the human rights implications of the strict liability offences is also included below.

Human Rights

The bill engages the right to freedom of movement. Section 13 of the *Human Rights Act 2004* (HRA) ensures that ‘Everyone has the right to move freely within the ACT and to enter and leave it...’.

Freedom of movement includes access to public parks, roads and other public spaces that will be regulated by the Bill. There are two elements of the limitation created by the Bill. Firstly the bill controls the activities that can be undertaken in public places and the conditions under which the activities can occur and imposes an obligation to obtain a permit to use a public space where that use involves carrying on an activity on the public unleased land in a way that excludes some or all members of the public from the place. It is important to note that this definition captures only the carrying on of an activity rather than merely transient or incidental use of a public place and it is not intended that the ordinary use of public facilities will be captured by the bill. For example, it is intended that the exclusive use provisions, would only be applied in specific locations for special events such as a wedding or a concert.

Secondly by issuing permits and approvals for the exclusive use by a permit-holder, the permit excludes other people who would normally have a right to use the space.

The bill seeks to ensure an orderly approach to the balancing of rights in the community and is a necessary and practical response to regulating the use of public land. It ensures that the land remains undamaged and protected from unauthorised interference so that it can be enjoyed and accessed appropriately by everyone in the community. It also ensures that activities are undertaken safely and with minimal interference to other people.

Throughout the bill there are a range of mechanisms to address these limitations and minimise that impact they will have on members of the community. For example as part of the decision making process, the bill provides for the opportunity to notify and consult with other relevant people who may be affected by the issuing of a permit or approval.

Overall the limitation on the protected freedom of movement is relatively minor, the bill does not seek to restrict the ordinary activities that people regularly use public land for in their day to day lives, any limitation that does exist from time to time or in relation to a particular activity that they may wish to undertake will be regulated only to the extent necessary to protect the same right of others to that space and necessary to achieve a fair balancing between the competing demands on that space.

Having a regulatory scheme in place to balance these competing interests and protect the community’s interest in maintaining public assets and the amenity of public spaces is in the public interest and any limitations created are the least restrictive means available of achieving this aim whilst facilitating the use of public land.

The bill also engages the right to privacy in section 12 of the Human Rights Act, which states that “everyone has the right not to have his or her privacy, home or correspondence interfered with unlawfully or arbitrarily and not to have his or her reputation unlawfully attacked”.

In creating a regulatory regime that includes a range of compliance and enforcement powers necessary to ensure the integrity of this regime such as the powers to: request names and addresses, issue directions, enter property, seize abandoned items and hold unclaimed property, the bill potentially limits this right.

Part 4 of the bill sets out enforcement provisions for the regulatory regime and provides template provisions in relation to powers of entry, search, seizure, confiscation or forfeiture and entry into a controlled environment. These provisions underpin the execution of powers authorised in other parts of the bill. For example, under clause 36, in certain circumstances entry to private property is allowed to remove a dangerous tree. In carrying out this power, Part 4 (specifically clause 107 - Power to enter premises) informs the standard considerations that need to be made in undertaking this action.

The limitations on the right to privacy are relatively minor and typically only occur when some previous notice or warning has been given or to protect public safety. There is no reasonable alternative to the proposed limitations available and it would simply not be possible to achieve the bill's purpose of ensuring that public land is safe and protecting everyone's right to use the land without these necessary limitations.

In relation to the creation of strict liability offences a concern is at times raised that strict liability offences reverse the onus of proof and create a limitation on the right to a presumption of innocence protected by section 22(1) of the *Human Rights Act 2004*. It is important to note that the presumption of innocence still exists in relation to the physical elements of the offence. To the extent that the right is limited because the obligation shifts to the accused to prove a defence once the conduct has been established without the need to prove the fault element, this is demonstrably justifiable. Given the nature of the offences proposed, the importance of having an effective mechanism to facilitate the use, and protect the amenity of public land and that this is the least restrictive means reasonably available means of achieving the that purpose, the criteria set out in section 28 of the *Human Rights Act 2004* are satisfied.

Outline of provisions

PART 1 Preliminary

Clause 1 – Name of Act

This clause provides that the bill, when enacted, will be known as the *Public Unleased Land Act 2012*.

Clause 2 – Commencement

This clause states that the Act will commence on the date decided by the Minister (within 6 months of the notification day) and commencement notified in the Legislation Register.

Clause 3 – Dictionary

This clause explains that the dictionary at the end of the Act is part of the Act.

Clause 4 – Notes

This clause makes it clear that the notes in the Act are explanatory only and do not form part of the Act. By contrast, an example included in the Act is part of the Act it may extend but does not limit the meaning of the Act (see section 132 of the *Legislation Act 2001*).

Clause 5 – Offences against Act – application of Criminal Code etc

This clause makes it clear that other legislation applies in relation to offences against the Act. The *Criminal Code 2002* applies to all offences against the Act and the *Legislation Act 2001* deals with the meaning of offence penalties that are expressed in penalty units.

Clause 6 – Object of Act

This clause sets out the object of the Act which is to ensure that the amenity and natural value of public unleased land is protected and to facilitate the use of public unleased land.

Clause 7 – Application of Act to Territory

This clause provides that section 16 (Offence—fail to comply with drainage direction); section 20 (Offence—carry out work on public unleased land without approval) and section 22 (Offence—fail to comply with repair damage direction) do not bind the Territory despite the operation of section 121 of the *Legislation Act*.

Clause 8 – Meaning of public unleased land

This clause defines, for the purposes of the Act, what is public unleased land.

Clause 9 – Meaning of public road

This clause defines, for the purposes of the Act, a public road as any street, road, lane, thoroughfare, footpath, or place that is territory land and is open to, or used by, the public.

PART 2

Managing and protecting public unleased land

DIVISION 2.1 Public Roads

Clause 10 – Director-general may fix or change public road levels

This clause gives the director-general a discretionary power to fix or change the level of a public road. It describes the mandatory process the director-general must follow in making a decision to use this power. The process includes publishing two prescribed notices in a daily newspaper about the proposal at least 30 days before the level is to be fixed or changed. There must be an opportunity for a public hearing.

Clause 11 – Director-general may temporarily close public roads

This clause gives the director-general a discretionary power to temporarily close a public road (a **closed road**). It provides for notification of the road closure. The notification requirements do not apply in urgent circumstances. An urgent circumstance could, for example, be flooding or a spillage.

Clause 12 – Approval to use closed road

A person can apply to the director-general for approval to use a closed road (**closed road approval**). The director-general must follow a mandatory process on receiving an application. It includes giving a copy of the application to each entity the director-general considers should be consulted about the application, and telling each entity that they may give a written submission to the director-general, within a 15 working days time frame, about why the closed road should not be used, or how the closed road should be used. Such entities may include, for example, the ACT Heritage Council, the Environment Protection Authority (EPA), ACT Planning and Land Authority (ACTPLA).

In deciding whether to issue an approval, the director-general must consider certain things. The director-general must be reasonably satisfied that use of the road in accordance with the approval would not be likely to cause unacceptable risk to people, property or the road. An approval may be subject to any condition that the director-general reasonably believes is necessary for the management or protection of the road.

This is a reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Clause 13 – Offence - use closed road without approval

This clause creates an offence if a person uses a closed road and does not hold a closed road approval. This is a strict liability offence.

Clause 14 – Director-general may make temporary public roads

This clause sets out the process to be followed if the director-general temporarily closes a public road and considers that it is necessary to make a temporary road for use while the road is closed. If the land for the temporary public road is fenced, the director-general must tell the occupier or owner of the land about the temporary public road at least 24 hours before making the temporary public road unless there are urgent circumstances. Urgent circumstances could, for example, be flooding or a spillage. The clause provides that the Territory is liable for damage, other than minor incidental damage, caused in making the temporary road.

DIVISION 2.2 Drainage affecting public unleased land

Clause 15 – Directions to construct surface water drains

This clause sets out the process for issuing directions to do certain things if surface water from land overflows into public unleased land and damages the public unleased land. The director-general may direct (a ***drainage direction***) the land owner to either repair the damage or construct stated drains or both of these things. A drainage direction must be in writing and specify details of the damage and repair required. The direction must also state when it must be complied with. It should be noted that the power to make the direction includes power to amend or repeal the direction.

This decision is a reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Clause 16 – Offence—fail to comply with drainage direction

This clause creates an offence with a maximum penalty of 5 penalty units. The offence is a strict liability offence and applies if the person does not comply with a drainage direction. The land owner, through a drainage direction, has notice of the need to comply.

Clause 17 – Construction of drains by Territory

This clause applies if a land owner is subject to a drainage direction and fails to comply with the direction. The director-general may, if a drain has not been constructed or maintained as directed, enter onto the relevant land, with the assistance that the director-general considers necessary, and construct or maintain the drains noted in the drainage direction. Reasonable costs of repairing the damage can be recovered in a court as a debt owed to the Territory by the land owner.

DIVISION 2.3 Work on public unleased land

Clause 18 – Meaning of *work* on public unleased land

This clause defines the meaning of work on public unleased land. The definition includes any interference with Territory property on the public unleased land and construction work carried out on the public unleased land.

Clause 19 – Approval to carry out work on public unleased land

This clause sets out the process by which a person may apply to the director-general for approval to carry out work on public unleased land (a ***work approval***). The director-general must consult with relevant entities which can make written submissions. The clause outlines the considerations the director-general must take into account when making a decision to approve the carrying out of work. This approval may include conditions such as lighting a work site after dark or fencing a work site. The approval may be subject to any condition that the director-general reasonably believes is necessary to eliminate or minimise an unacceptable risk or effect to the public land or other members of the public consistent with the provisions of subclause (4).

This is reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Clause 20 – Offence- carry out work on public unleased land without approval

This clause provides that it is a strict liability offence with a maximum penalty of 10 penalty units to undertake work, as defined in clause 18, on public unleased land without a permit issued under clause 19.

DIVISION 2.4

Damage to public unleased land

Clause 21 – Directions to repair damage to public unleased land

This clause sets out the process to be followed if the director-general issues a direction (*repair damage direction*) after a person causes damage to public unleased land or Territory property on public unleased land. The director-general may direct in writing that the person is to repair the damage. A direction must state the public unleased land and Territory property (if any) and the damage to be repaired. The direction must also state the timeframe within which the direction must be complied, however the direction must allow at least one month for the repair work to be completed. The power to make the direction includes the power to amend or repeal the direction.

This is a reviewable decision (see part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Clause 22 – Offence—fail to comply with repair damage direction

This clause creates a strict liability offence with a maximum penalty of 20 penalty units for failing to comply with a direction issued under clause 21.

Clause 23 – Repair of damage by Territory

This clause applies if a person is subject to a repair damage direction and fails to comply with the direction. The director-general may repair the damage and recover the reasonable costs of repairing the damage as a debt due to the Territory by the person.

DIVISION 2.5

Signs on public unleased land

Clause 24 – Meaning of *sign* on public unleased land

This clause defines the meaning of a sign on public unleased land which includes an advertisement and a public notice.

Clause 25 – Approval to place sign on public unleased land

This clause sets out the process that must be followed for approval to place a sign on public unleased land. The director-general must provide notice of the application to relevant entities and seek written submissions. In making a determination to approve a sign the director-general must consider certain matters. Matters include whether placing the sign in accordance with the approval would be likely to cause undue disturbance or inconvenience to people, unacceptable risk to people or property, or damage the public unleased land. If the sign is a movable sign, the approval is subject to the condition that the placement and keeping of the sign must comply with the Movable Signs Code of Practice (see clause 27).

An approval may be subject to any other condition that the director-general reasonably believes is necessary for the management or protection of the public unleased land.

This is a reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Clause 26 – Offence—Place sign on public unleased land without approval

This clause creates a strict liability offence with a maximum penalty of 10 penalty units for placing a sign on public unleased land without an approval under clause 25.

Clause 27 – Movable signs code of practice

The Minister can approve a code of practice about movable signs on public unleased land. An approved code of practice is a disallowable instrument. The clause lists the range of provisions that may be included, for example, the kind of insurance policy that a person placing a movable sign on public unleased land must have and how movable signs are to be constructed.

Clause 28 – Offence—Fail to comply with code of practice

This clause creates a strict liability offence with a maximum penalty of 50 penalty units if the failure relates to a condition to have insurance; or if the failure does not relate to an insurance condition the maximum penalty is 10 penalty units.

The higher penalty of 50 penalty units is justified in this offence as it relates to the condition of insurance. It is important that a person placing a movable sign have appropriate insurance to compensate for any harm (personal injury or property damage) that may be caused by placing a movable sign. It is important for the Territory to ensure compliance and given the seriousness of risk a higher penalty unit is justified. As the requirement for insurance is a condition of the approval the approval-holder will be on notice about the requirement.

Clause 29 – Territory indemnified regarding movable signs

This clause provides that a person who places a movable sign on public unleased land with approval is liable to indemnify the Territory for any liability the Territory incurs as a result of that sign being placed there.

DIVISION 2.6 Trees and other plants affecting public unleased land

Clause 30 – Definitions—Division 2.6

This clause sets out definitions for this division.

Clause 31 – Direction to prune tree etc overhanging public unleased land

This clause applies if the director-general believes, on reasonable grounds, that a tree or other plant is overhanging public unleased land and likely to obstruct or inconvenience anyone on the public unleased land. The director-general may direct (a ***plant pruning direction***) the occupier of the land on which the tree or other plant is growing to prune the tree or other plant.

A decision under this section is a reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

If the tree or other plant is a ***registered tree*** and the pruning would, or may, damage the tree, a ***tree protection approval*** (see definition Clause 30) for the pruning must be in force

and signed by the Conservator before the director-general issues the plant pruning direction. A tree protection approval is not needed for regulated trees because they are exempted under the *Tree Protection Act 2005*, s 19 (d) (iv) and (v).

The clause sets out what the direction must include and the timeframe for compliance.

Clause 32 – Offence—fail to comply with plant pruning direction

This clause creates a strict liability offence with a maximum penalty of 5 penalty units for failing to comply with a plant pruning direction issued under clause 31.

Clause 33 – Pruning or removal of tree etc by Territory

This Clause describes the process that the director-general may take if an occupier fails to follow a plant pruning direction. The director-general may enter onto the relevant land with the assistance necessary and prune the tree or other plant. In addition, the reasonable costs of the pruning may be recovered in court as a debt due to the Territory by the occupier.

This clause engages section 12 of the HRA in relation to privacy rights. The purpose of the clause is to protect public safety and it is justifiable that should the occupier not comply with the direction, the Territory is able to enter for the specific purpose of achieving the objective.

This is a reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Clause 34 – Direction to remove tree etc endangering public on public unleased land

This clause describes the scope of the direction and the timeframe for compliance if the director-general issues a direction (a ***plant removal direction***) believing on reasonable grounds that a tree or other plant endangers the safety of anyone on public unleased land. An example is where a tree or plant is endangering the safety of a person on public unleased land by obstructing the vision of drivers on a public road.

If the tree or other plant is a ***registered tree***, a ***tree protection approval*** must be in force before the director-general can issue the plant removal direction.

Clause 35 – Offence—fail to comply with plant removal direction

This clause creates a strict liability offence with a maximum penalty of 50 penalty units for failing to comply with a direction to remove a plant.

The penalty is at the top of the ordinarily acceptable range for strict liability offences because of the risk that a failure to comply may create for public safety.

Clause 36 – Removal of tree etc by Territory

This clause applies if an occupier fails to comply with a plant removal direction. The director-general may enter onto the relevant land, with the assistance that the director-general considers necessary, and remove the tree or other plant and recover the reasonable costs of the removal as a debt due to the Territory by the occupier.

This clause engages section 12 of the HRA in relation to privacy rights. The purpose of the clause is to protect public safety and it is justifiable that should the occupier not comply

with the direction then the Territory is able to enter for the specific purpose of achieving the objective.

DIVISION 2.7 Graffiti visible from public unleased land

Clause 37 - Meaning of occupier of leased territory land-div 2.7

This clause sets out the meaning of *occupier* in this division.

Clause 38 – Graffiti removal from property on leased territory land

This clause sets out the process for the removal of graffiti on property on leased territory land if the graffiti is visible from public unleased land.

Clause 39 – Graffiti removal liability of the Territory

This clause covers the liability of the Territory in relation to the damage (other than minor incidental damage) caused by the removal of the graffiti.

PART 3 Public unleased land permits

This part provides for the issuing of a public unleased land permit where a person or corporation wants to use public unleased land and the person is a suitable person to hold a permit and the activity a suitable activity for a public unleased land permit.

Activities that require a permit are broad and include the placing of objects such as fencing or charity bins, the holding of markets or weddings, the placing of furniture in outdoor cafe areas and large commercial and community events such as concerts.

Other laws may apply to the staging of events or other activities in the Territory and the issuing of a permit to use land is not of itself an agreement to the staging of an event or activity.

DIVISION 3.1 Important concepts

Clause 40 – What is a public unleased land permit?

This clause defines a public unleased land permit as meaning a permit that authorises the permit-holder to exclusively use the stated public unleased land, at a stated time, and for a stated activity.

Clause 41 – When does a person use public unleased land?—Pt 3

This clause defines the use of public unleased land. A person uses public unleased land if the person carries on an activity on the public unleased land in a way that excludes some or all members of the public from the place. Examples of using public unleased land include: placing tables and chairs on the footpath outside a cafe, placing a construction skip on a footpath, placing a charity bin on a footpath, holding markets on unleased land, holding a concert in a park, holding a wedding in a park and parking a car in a park.

Under sub-clause 41(2), the Minister has been provided with the power to declare any activity on public unleased land either is, or is not a use of that land. This may relate to specific activities for which permits are routinely sought or activities over which there is some confusion as to whether or not a permit is needed. It also allows for classes of

activities to be proscribed, for example it may prescribe that the use of picnic and bbq facilities for a reasonable period of time is not a use under Part 3 and clarify that no permit is needed. The intention of the provision is to provide greater clarity for members of the public about how the system works and their obligations under the scheme. The determination of matters by the Minister is a disallowable instrument.

Clause 42 – Who is an influential person for a corporation?—Pt 3

This clause defines the meaning of who an influential person is for the purposes of dealing with an application by a corporation under the Act. The definition is central to regulating corporations, as information about each influential person is required to be provided for consideration in determining the suitability of a corporate application under the Act.

DIVISION 3.2 Public unleased land permits—offences

Clause 43 – Offence—use public unleased land without permit

This clause creates an offence where a person uses public unleased land and does not hold a public unleased land permit. **Use** is defined in clause 41. In effect, this offence relates to a person who uses public unleased land to the exclusion of other people and does not have a permit, approval or other authorisation to use the land. It does not create an offence for people who are merely utilising the land transiently or otherwise ordinarily using public spaces for their intended purposes such as informal sporting games at the local park.

This clause creates a strict liability offence with a maximum penalty of 20 penalty units.

Clause 44 – Offence—fail to comply with condition of permit

This clause creates a strict liability offence with a maximum penalty of 20 penalty units for breach of a condition that is not a financial assurance condition and 30 penalty units if it is a breach of that condition.

DIVISION 3.3 Public unleased land permits—application

Clause 45 – Public unleased land permit—application

This clause sets out the process for applying for a public unleased land permit and the form and content of the application. It must include the activity for the permit and include a plan (a **location plan**) clearly showing the location, boundaries and dimensions of the public unleased land for the permit and the position of the activity on the public unleased land.

If the activity for the permit includes placing tables and chairs at an outdoor eating or drinking place, then the plan must be professionally drafted to ensure that the reader can easily and clearly see that the placement of the items is not in a location that may cause harm to others or damage Territory assets.

DIVISION 3.4 Public unleased land permits—suitability of people

Clause 46 – Who is a suitable person to hold a public unleased land permit?

This clause defines a **suitable person** to hold a public unleased land permit. The director-general in making a decision about a person's suitability to hold a public unleased land

permit must consider suitability information about the person and any further information given under clause 49 to the director-general.

Clause 47 – What is suitability information about a person?

This clause defines what ***suitability information*** about a person is. It could include information about any conviction of or finding of guilt against the person for an offence against this Act, or any proven non-compliance by the person with a legal obligation in relation to carrying on an activity on public unleased land. For example, failing to comply with a ***removal direction*** to remove an object.

It may also include any refusal of an application by the person for a licence, permit or other authority to carry on an activity on public unleased land. For example, an application refused for a licence under section 303 of the *Planning and Development Act 2007*.

Clause 48 – Suitability of people—further information about people

This clause sets out the further information the director-general may seek before making a decision about whether a person is a suitable person to hold a public unleased land permit.

DIVISION 3.5 Public unleased land permits—suitability of activities

Clause 49 – What is a suitable activity for a public unleased land permit?

This clause defines ***suitable activity*** for a public unleased land permit. It lays out the process the director-general must follow and the considerations to be taken into account in deciding whether the activity is a suitable activity for a public unleased land permit. These mandatory considerations include any submission received as part of the public consultation about the activity, and any risk management plan.

Clause 50 – What is suitability information about an activity?

This clause sets out what information is ***suitability information*** about an activity.

Suitability information depends on whether the activity involves placing an object on public unleased land or if the activity involves holding an event on public unleased land.

When placing an object suitability information includes the size, nature and use of the object as well as information about possible risks and requirements of construction work to place the object.

If the activity involves an event being held on public unleased land then suitability information includes information about the nature of the event and how many people are expected to attend the event as well as any risks and how the risks will be minimised.

The director-general must also consider this suitability information when deciding to amend or renew a public unleased land permit (see clause 70 and 74).

Clause 51 – Suitability of activities—further information about activity

This clause applies if the director-general is making a decision about whether an activity is a suitable activity for a public unleased land permit.

The director-general may issue an activity information notice seeking additional information about the activity within a specified timeframe. If an applicant does not comply with the activity information notice then the director-general need not make a decision as to whether the activity is a suitable activity for a permit.

Clause 52 – Suitability of activities—other approvals

Some proposed activities on public unleased land require other approvals such as licences or permits under another law of the Territory or the Commonwealth. For example, an environmental authorisation under the *Environment Protection Act 1997* to cover noise levels at a music festival.

This clause ensures that the director-general can obtain a copy of the stated approval, licence, permit or other authority before deciding an application for a public unleased land permit. The requirement to produce the other approval must be made by written notice to the applicant.

Clause 53 – Suitability of activities—public consultation

If the director-general is satisfied that carrying on a proposed activity on public unleased land in accordance with a permit is likely to have a significant impact on people lawfully at adjacent or nearby places, then the director-general may require the applicant to undertake public consultation.

This clause provides for the director-general to issue a written notice (a **public consultation notice**) requiring the applicant to display a sign about the application and place a public notice in a daily newspaper. The provision sets out the type of information that must be included in the notice including that written submissions can be made to the director-general during the public consultation period (15 working days after the sign or notice has been placed, whichever is the later).

Clause 54 – Suitability of activities—public consultation submissions

If the director-general receives a submission under section 54(3) and proposes to decide that the activity is not a suitable activity for a permit, this clause provides an opportunity for applicants to show cause why the activity should not be considered unsuitable for the public unleased land.

The director-general must give the applicant written notice of the proposed decision and the opportunity to respond by written submission within 20 working days after the date of the notice.

Clause 55 – Suitability of activities—risk management plan

This clause provides for the mandatory preparation of a risk management plan where the director-general is satisfied that carrying on the activity in accordance with a permit is likely to cause undue risk to people or property.

In such situations the director-general may give notice (a **risk management plan notice**) to the applicant requiring the applicant to prepare a risk management plan for the public unleased land permit. The risk management plan must identify the risks to people and property and detail the procedures, practices and arrangements for eliminating or minimising the risks.

The director-general need not decide an application for a public unleased land permit if the director-general has given the applicant a risk management plan notice and the applicant does not comply with the notice.

Clause 56 – Suitability of activities—inspection of object

This clause provides for the inspection of an object before deciding whether a permit will be issued. Where the activity is the placing of an object on unleased public land and the director-general requires an inspection of the object an inspection notice can be issued.

The director-general need not decide whether an activity is a suitable activity for a public unleased land permit if the director-general has given the applicant an inspection notice and the applicant does not comply with the notice.

DIVISION 3.6 Public unleased land permits—decision

Clause 57 – Public unleased land permit—decision on application

Clause 57 provides for the decision by the director-general to issue a permit to an applicant if reasonably satisfied of the suitability of the applicant and the suitability of the activity for the public unleased land permit. A public unleased land permit may be subject to any condition that the director-general reasonably believes is necessary to meet the objectives of this Act. Examples of such conditions could include the provision of a financial assurance, the fencing of the relevant public unleased land or the holding of relevant insurance by the applicant.

The director-general must make a decision in the required time. The meaning of required time is set out in clause 57(5) but generally means 28 days after the last required action, for example, after the director-general receives a risk management plan where this has been required.

This is a reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Failure to issue a public unleased land permit within the required time is taken to be a decision not to issue the public unleased land permit (see ACT Civil and Administrative Tribunal Act 2008, s 12).

Clause 58 – Public unleased land permit—form

This clause states the form a permit must take and the information to be included in the permit.

Clause 59 – Public unleased land permit—term

This clause provides that the maximum term for a public unleased land permit is two years. The previous one year maximum was determined as imposing an unacceptable burden on small business.

DIVISION 3.7

Public unleased land permit—financial assurance conditions

Clause 60 – Meaning of *financial assurance condition*

This clause defines the meaning of financial *assurance condition* on a public unleased land permit. It means a condition requiring the permit-holder to give the director-general a financial assurance of a stated kind and amount to protect the Territory from financial loss in cases where damage to public unleased land is possible.

Clause 61 – Financial assurance condition—imposition

This clause allows the director-general to impose a financial assurance condition on a public unleased land permit including a renewal or amended permit. The director-general must be satisfied that it is justified having regard to the likelihood that the permitted activity will cause serious or material damage to the permitted public unleased land and that there is a likelihood that action will need to be taken in the future to repair the damage. The director-general must have regard to any financial assurance considerations determined by the Minister and any other relevant matter.

Under subclause 61 (5), the Minister may determine matters to be considered by the director-general as financial assurance considerations. For example these may include the status of the applicant as a registered charity or the type of risks that are relevant to particular activities. A financial assurance considerations declaration is a disallowable instrument.

A financial assurance must be given for the period stated in the condition on the public unleased land permit.

The financial assurance must be in the form of a bank guarantee, a bond, an insurance policy or if none of those forms of security is appropriate in the circumstances, another form of security that the director-general considers appropriate. The director-general must not require financial assurance of an amount greater than the total amount that the director-general reasonably believes is needed to repair potential damage that could result from the use of the land.

This provision is not intended to disadvantage charities or not-for-profit groups when these groups seek to use public unleased land under a permit. Rather, the intention is to ensure that there is capacity for the Territory to proactively provide for reparation of damage where that likelihood exists.

Clause 62 – Financial assurance condition—show cause

This clause provides that the director-general must give notice to the applicant of the intention to impose a financial assurance condition on an applicant or a permit-holder.

The written notice must include the grounds for the proposed condition and the amount and form of the proposed financial assurance. The applicant or permit-holder has an opportunity to respond in writing to show why the condition should not be imposed. Any submission must be given to the director-general during the 20 working days after the date of the notice.

Following consideration of any submissions and where the director-general decides to impose the condition, the director-general must tell the applicant or permit-holder about the decision and when the financial assurance must be provided.

Clause 63 – Financial assurance conditions—permit cancellation

This clause establishes that if a financial assurance condition is required and the permit-holder does not provide the financial assurance in accordance with the condition or by the due date, the director-general must cancel the public unleased land permit.

Clause 64 – Financial assurance condition—claim or realisation

This clause sets out when the director-general may recover the reasonable expenses of repairing the damage by making a claim on, or realising, the financial assurance.

Clause 65 - Financial assurance condition—notice before claim or realisation

This clause sets out the process the director-general must follow before making a claim or realisation on the financial assurance. This provision provides a show clause period where a permit-holder has an opportunity to respond in writing as to why the financial assurance should not be claimed or realised as proposed.

Clause 66 – Financial assurance condition—recovery of extra costs

This clause applies if the director-general makes a claim on or realises a financial assurance condition under a public unleased land permit and the amount recovered by the director-general is less than the reasonable expenses that the director-general incurred, or will incur, in repairing the damage. The provision sets out the process and timelines for giving a written notice requiring the permit-holder to pay the reasonable difference between expenses and the realised assurance. A decision under this clause is a reviewable decision (see Part 5).

If the permit-holder does not pay the stated amount then the amount that remains unpaid together with interest on the unpaid amount, is a debt due to the Territory by the permit-holder. The Minister can determine interest rates for this clause as set out under subsection 130(1)(b) of the Act.

Clause 67 – Financial assurance condition—money held by Territory

This clause provides that interest accrues on an amount of money held by the Territory as financial assurance which has been provided as a condition of a permit. The interest rate is determined by the Minister under subclause 130(1) (c). The permit-holder is entitled each year to the accrued interest if it has not been claimed by the director-general under clause 64. Provision is also made under this clause for the payment to the permit-holder of unclaimed moneys when the financial assurance is no longer required; the permit is surrendered under clause 76; or, cancelled under clause 81 when regulatory action is taken.

DIVISION 3.8 Public unleased land permits—amendment, transfer, renewal, etc

Clause 68 – Public unleased land permit—amendment initiated by director-general

The director-general can initiate an amendment to a public unleased land permit in certain circumstances. This clause provides that before an amendment notice can be given a proposed amendment must be notified to the permit-holder in writing providing an opportunity for the permit-holder to comment on the proposed amendment before a

decision is made. A proposal notice is not necessary where the permit-holder applied for, or agreed in writing, to the amendment.

This decision is a reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Clause 69 – Public unleased land permit—application to amend permit

A permit-holder may apply to the director-general to amend the public unleased land permit.

If a permit-holder is a corporation and there is a change in the person who is the influential person then the permit-holder must apply for an amendment to the permit.

Clause 70 – Public unleased land permit—decision on application to amend permit

If the director-general receives an application to amend a public unleased land permit this clause provides the considerations and conditions under which the director-general makes a decision to amend. These considerations are very similar to those that the director-general must consider when issuing a permit.

The decision to amend or refuse to amend is a reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Clause 71 – Public unleased land permit – application to transfer permit

This clause provides the application requirements (eg. in writing, suitability information) for a permit-holder to apply to the director-general to transfer the public unleased land permit to someone else.

Clause 72 – Public unleased land permit – decision on application to transfer permit

This clause provides the considerations and timeframes under which the director-general can decide to transfer the public unleased land permit to the proposed new permit-holder. The director-general must be satisfied that the proposed new permit-holder or influential person for the proposed new permit-holder is a suitable person to hold a public unleased land permit.

The decision must be made within 28 days, or if additional information is required from the applicant 28 days after the information is provided by the applicant.

A decision to refuse to transfer a permit or impose or amend a condition in the transfer of the permit is a reviewable decision (see Part 5) and the director-general must give the applicant a reviewable decision notice.

Clause 73 – Public unleased land permit—application for renewal of permit

This clause provides that a permit-holder can apply to have the permit renewed. The application must be in writing and received by the director-general at least 30 days before the permit expires however the director-general can extend the time for making an application. If an application has been made to renew a public unleased land permit then the permit remains in force until the application is decided.

These conditions replace the previous regime which provided annual renewal of permits with no discretion in relation to renewal.

The clause provides that only in cases where a permit-holder is no longer a suitable person to hold a permit or the permitted activity is no longer a suitable activity that a permit will not be renewed. This may occur where, for example, a permit-holder has committed an offence under this Act such as not complying with a permit direction or where the physical situation of an activity has changed. For example, changes to unleased public land and infrastructure may not allow an object to be placed safely even though it could be when the original permit was issued.

The intention of the change is not to disadvantage commercial operations. The test by which a permit is granted is the same in relation to suitability of person and activity as the original issuing of a permit. In this regard, if there is no change in situation, the expectation is that the renewal will be granted.

The longer period of permit, from one year to two years, will remove some of the administrative burden associated with renewing licences on an annual basis.

Clause 74 – Public unleased land permit—decision on application for renewal of permit

This clause provides criteria for the consideration of an application to renew a permit under section 73.

A decision to refuse to renew a public unleased land permit or impose or amend a condition in renewing the permit is a reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Failure to renew a public unleased land permit within the required time is taken to be a decision not to renew the permit (see ACT Civil and Administrative Tribunal Act 2008, s 12).

Clause 75 – Public unleased land permit—replacing when lost, stolen or destroyed

This clause provides for the replacement of a lost, stolen or destroyed permit. A fee may be determined under clause 130 for this provision.

Clause 76 – Public unleased land permit—surrender

This clause provides for the surrendering of a public unleased land permit by a permit-holder.

Clause 77 – Offence—fail to notify change of name or address

This clause introduces a strict liability offence with a maximum penalty of 1 penalty unit when a permit-holder does not notify a change of name or address.

Clause 78 – Public unleased land permit—director-general to change name and address

This clause sets out the process to change the name and address on a permit.

DIVISION 3.9

Public unleased land permits—regulatory action

Clause 79 – Public unleased land permit—grounds for regulatory action

This clause provides the grounds for regulatory action against a permit-holder. Grounds for regulatory action are provision of false or misleading information by a permit-holder in relation to an application or contravention of a condition of a permit by a permit-holder.

Clause 80 – Public unleased land permit—regulatory action

This clause provides the regulatory action that can be taken against a permit-holder. These actions include the cancelling or suspension of a permit, imposing additional conditions or amending conditions and disqualifying a person from applying for a public unleased land permit.

Clause 81 – Public unleased land permit—taking regulatory action

This clause sets out the mandatory process that must be followed if regulatory action is proposed. The director-general must provide procedural fairness to the permit-holder by providing a show cause notice and the opportunity for the permit-holder to respond to the proposal to take regulatory action.

If the director-general believes on reasonable grounds that a ground for regulatory action has been established the clause provides the options open to the director-general in taking further action.

Clause 82 – Public unleased land permit—immediate suspension

This clause applies if a show cause notice under section 82 is provided to a permit-holder and, having regard to the grounds stated in the notice, the director-general believes on reasonable grounds that the person's permit should be suspended immediately in the interests of public safety.

Clause 83 – Public unleased land permit—effect of suspension

This clause sets out the effect of suspension of a permit.

Clause 84 – Offence—fail to return amended, suspended or cancelled permits

This clause sets out the strict liability offence which has a maximum penalty of 10 penalty units for a permit-holder failing to return an amended, suspended or cancelled permit to the director-general.

Clause 85 – Action by director-general in relation to amended or suspended permit

This clause provides that a permit must be returned after suspension has ended or a replacement provided where a permit is amended because of regulatory action.

DIVISION 3.10

Public unleased land permit register

Clause 86 – Public unleased land permit register

This clause establishes a register of permits and the required information to be kept on the register. It provides that the register may be kept in any form, including electronically, that the director-general considers appropriate.

Clause 87 – Correction and keeping up-to-date register

This clause provides for the register to be corrected where there is a mistake, error or omission.

PART 4 Enforcement

DIVISION 4.1 General

Clause 88 – Definitions—Part 4

This clause defines terms used in part 4 of the Act.

DIVISION 4.2 Authorised people

Clause 89 – Authorised people

This clause provides the director-general with the power to appoint a public servant as an authorised person for this Act.

In addition, a person who is appointed as an investigator under the *Fair Trading (Australian Consumer Law) Act 1992* is by virtue of that appointment an authorised person for this Act.

Clause 90 – Identity cards

This clause applies to an authorised person appointed under section 89 (1).

The director-general must give an authorised person an identity card stating the person's name and that the person is an authorised person. The card must show a recent photograph of the authorised person, the card's date of issue and expiry, and anything else prescribed by regulation. A person commits an offence if the person stops being an authorised person and does not return the person's identity card to the director-general as soon as practicable but no later than 7 days after the day the person stops being an authorised person.

Failure to do so is a strict liability offence with a maximum penalty of 1 penalty unit. An exception applies if the identity card has been lost or stolen or destroyed by someone else.

Clause 91 – Power not to be exercised before identity card shown

This clause provides that an authorised person may only exercise a power under this Act if the authorised person first shows the person the authorised person's identity card.

Those authorised officers appointed as investigators under the *Fair Trading (Australian Consumer Law) Act 1992* are required to show identity cards under Section 38 of that Act.

DIVISION 4.3 Directions etc

Subdivision 4.3.1 General directions

The suite of powers required by authorised officers to ensure the integrity of this regime includes the issuing of directions. The issuing of directions by an authorised officer is consistent with Territory compliance models.

Clause 92 – Direction to give name and address

This clause provides standard directions that apply if a police officer or authorised person suspects on reasonable grounds that a person has committed, is committing or is about to commit an offence against this Act, or may be able to assist in the investigation of an offence against this Act.

Clause 93 – Offence—fail to comply with direction to give name and address

This is a strict liability offence with a maximum penalty of 5 penalty units for failing to comply with a direction.

This section does not apply to a person if the authorised person did not produce their identity card for inspection by the person if asked or if the authorised person or a police officer did not warn the defendant that failure to comply with the direction is an offence.

Clause 94 – Direction to produce approval, permit or insurance policy

A police officer or authorised person may direct an approval-holder to produce an approval or a permit-holder to produce the permit. If the permit includes a financial assurance condition requiring the permit-holder to hold a stated kind of insurance policy, the direction can include that the insurance policy must also be produced. The direction must be in writing and state the permit and policy to be produced, and where and to whom the permit or policy is to be produced, and when the direction must be complied with. Power to make the direction includes power to amend or repeal the direction.

The police officer or authorised person may do one or more of the following: inspect the permit and policy produced; make copies of, or take extracts from the permit and policy produced; and seize and remove the permit or policy produced if the officer or person believes on reasonable grounds that it may provide evidence of an offence against the Act.

Clause 95 – Offence—fail to comply with direction to produce approval, permit or insurance policy

This clause establishes an offence for failing to comply with a permit direction issued under clause 94. This section does not apply to a person if the person has a reasonable excuse for failing to comply with the direction. There is a maximum penalty of 10 penalty units.

Clause 96 – Direction to leave permitted public unleased land

This clause provides a police officer or authorised person to direct a person to leave an area that is being used under a permit, where that person does not have the consent of the permit-holder to be in the area. This has been drafted in recognition of the right to freedom of movement under the HRA as people generally have a right to and expectation that they may access public unleased land. The provision ensures that there must be reasonable belief of the breach on the part of the official, reasonable notice in the form of a written notice issued to the person and a warning that it is an offence to breach the notice.

Clause 97 – Offence—fail to comply with Direction to leave permitted public unleased land

This is a strict liability offence. A police officer or authorised person must give proper notice under section 96. It is not an offence if the person is not warned that failure to comply with the direction is an offence.

Clause 98 – Direction to remove objects from public unleased land.

This clause allows a police officer or authorised person to direct a person to remove an object that the person has placed on public unleased land when the placing of the object is not authorised. The clause does not apply to authorised placement of objects, specifically where there is approval to place the object (for example, under a closed road approval or work approval), the placement is authorised under a public unleased land permit, another Territory law or if the object is a vehicle parked on a road or road related areas so as not to contravene the *Road Transport (Safety and Traffic Management) Act 1999* (RT(STM) Act).

The parking of vehicles on unleased public land is generally regulated through RT(STM) Act and associated regulation. The definition of park in this clause is found in the *Road Transport (Safety and Traffic Management) Regulation 2000* and is consistent with the usual meaning of the term.

Road and road related area are defined in the RT(STM) Act. A road related area includes the area that divides a road; a footpath or nature strip adjacent to a road; areas open to the public and designated for use by cyclists or animals; public areas that are not roads but open to the public for driving, riding or parking vehicles; the shoulder of the road; and, other areas that are open to or used by the public that are declared under the *Road Transport (General) Act 1999*.

The form of the removal direction and the conditions under which the direction can be issued are prescribed in the Act and include a provision for the direction to be given to the person by securing it to the object in a conspicuous place.

Clause 99 – Offence—fail to comply with removal direction

This clause establishes a strict liability offence for failing to comply with a removal direction. The maximum penalty is 10 penalty units.

Subdivision 4.3.2

Urgent action

Clause 100 – Director-general’s directions

This clause provides the director-general with the power to issue directions in certain circumstances. A direction can be issued if the director-general believes on reasonable grounds that there is, or is likely to be a breach of a public unleased land permit or another contravention of this Act **and** in addition the breach is or is likely to cause *disturbance, inconvenience or offence* to people in nearby places or risk to people or property.

The director-general may direct a permit-holder, employee of a permit-holder or a person working at the permitted place to take action to prevent the breach or contravention. A direction to reduce loud noise is an example of a situation where a director-general’s direction might be used.

A director-general’s direction must be in writing and either state the action to be taken and when the direction must be complied with, or state the conduct that should stop and for how long the direction is in force

This is a reviewable decision (see Part 5). The director-general must give the applicant a reviewable decision notice about the decision.

Clause 101 – Offence—fail to comply with director-general’s direction

This clause creates a strict liability offence for failing to comply with a director-general’s direction with a maximum penalty of 20 penalty units.

Clause 102 – Emergency closure of permitted place

This clause provides for the closure of a permitted place by a senior police officer if the officer believes on reasonable grounds that a breach of this Act has happened, or is likely to happen, and the closure of the place is necessary to prevent or reduce undue risk to people or property. If an emergency closure order is made the permit-holder must be told in writing the name of the police officer making the order and when the order begins and ends. The permit is suspended for the period of the order.

Clause 103 – Emergency closure notice

This clause provides that if a senior police officer makes an emergency closure order then as soon as practicable an **emergency closure notice** must be provided to the permit-holder. This order must be in writing stating the date of issue of the notice and the duration of the order. It must include details of the breach or potential breach of the Act and the basis for the officer’s belief. Records must be kept by police of the notice and a copy provided to the director-general.

Clause 104 – Offence—fail to comply with emergency closure order

This clause creates a strict liability offence for failing to comply with an emergency closure order with a maximum penalty of 30 penalty units.

The penalty units are at the higher end of the acceptability in a strict liability offence however are justified on the basis of the emergency nature of the notice.

DIVISION 4.4 Removal and disposal of objects on public unleased land by Territory

Clause 105 – Removal of objects by Territory

If a person is subject to a removal direction (see clause 98) and does not comply with the direction or an object is abandoned or causing an obstruction or hazard for people, this clause provides that an authorised person may remove the object and place it in a retention area.

Clause 106 – Disposal of objects by Territory

This clause allows the Territory to dispose of an object moved to a retention area under clause 105. Unless an object is a vehicle, it is taken to be uncollected goods under the *Uncollected Goods Act 1996* and can be disposed of under that Act.

If the object is a vehicle, the director-general must give the registered operator of the vehicle a written notice of the retention and allow the operator seven days to collect the vehicle before it can be disposed of under the *Uncollected Goods Act 1996*.

DIVISION 4.5 Powers of authorised people

Clauses **107** to **126** are template powers provided to ACT officers who are authorised under Territory legislation with regulatory powers.

Clause 107 – Power to enter premises

This clause lays out the standard provisions for an authorised person to enter premises.

Clause 108 – Production of identity card

This clause protects the privacy rights of an occupier of premises, permit-holder or other person by requiring an authorised person or police officer to show their identification cards when they enter premises.

Clause 109 – Consent to entry

This clause protects the right to privacy of an occupier of premises, permit-holder or other person by outlining various conditions which a police officer or authorised person must comply with when seeking consent to enter premises.

Clause 110 – General powers on entry to premises

This clause outlines the activities an authorised person can undertake after entering licensed premises. Occupiers or anyone else at the premises are obliged to provide reasonable assistance in carrying out these activities. There is a maximum penalty of 20 penalty units should a person not take reasonable steps to comply.

Clause 111 – Power to seize things

This clause empowers an authorised person who has entered premises with consent, or under a warrant, or believing an offence against this Act has occurred, or where public safety or damage to property poses a risk, to seize anything at the premises related to an offence and of evidential value.

The clause makes it a strict liability offence for a person to interfere with a seized or restricted item, once the authorised person has declared the item to be seized and not to be disturbed unless allowed by the authorised person.

DIVISION 4.6 Search warrants

Clause 112 – Warrants generally

This clause outlines the procedures an authorised person must follow to obtain a warrant for entry to premises in connection with enforcement actions under the Act. Search warrants can only be issued by the Courts and the provision prescribes when a magistrate may issue a warrant and what the contents of the warrant must contain.

Clause 113 – Warrants—application made other than in person

This clause facilitates the obtaining of a warrant by an authorised person by means other than in person. This process allows for warrants to be obtained in urgent or special circumstances.

Clause 114 – Search warrants—announcement before entry

This clause requires an authorised person to hand to the occupier a copy of the warrant and a document setting out the rights and obligations of the occupier while the warrant is being executed.

This clause protects the right to privacy of an occupier of premises, permit-holder or other person by requiring an authorised person to undertake specific actions before executing a warrant under the Act. The exception applies only if a person's safety is at risk or someone attempts to frustrate the execution of the warrant.

Clause 115 – Details of search warrant to be given to occupier etc

This clause lays out the procedure to be followed if the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person a copy of the warrant and a document setting out the rights and obligations of the person.

Clause 116 – Occupier entitled to be present during search etc

This clause acknowledges the right of an occupier to be present at the premises and to observe the execution of the search, except if the occupier's presence impedes the search or frustrates its objectives.

DIVISION 4.7 Return and forfeiture of things seized**Clause 117 – Receipt for things seized**

This clause provides that for anything seized, a receipt must be given in accordance with the requirements of this clause, giving details about what will happen to the thing after it is seized.

Clause 118 – Moving things to another place for examination or processing under search warrant

This clause facilitates the movement of things which are suspected of being able to be seized under the warrant to another location only for processing. The purpose is to allow authorised people to move things for the purposes of determining if the terms of a search warrant apply.

Clause 119 – Access to things seized

This clause facilitates anyone who would be entitled to inspect a seized thing or take extracts from it or make copies to continue to do so after the thing is seized under this Act.

Clause 120 – Return of things seized

This clause provides that items seized must be returned or compensation paid unless certain circumstances apply.

Clause 121 – Forfeiture of seized things

This clause provides that seized things may be forfeited to the Territory under certain conditions.

Clause 122 – Power to destroy unsafe things

This clause gives authorised people the power to destroy things that present a safety hazard. The strict liability offence is included to ensure that a direction is complied with to avoid a risk to public safety if there is a failure to comply.

Clause 123 – Application for order disallowing seizure

This clause provides an avenue for people who are entitled to claim a thing which has been seized to apply to a Magistrate to have the thing returned.

Clause 124 – Order for return of seized thing

This clause sets out specific criteria which the Magistrates Court must consider before issuing orders to return a seized thing.

DIVISION 4.8 Enforcement—miscellaneous**Clause 125 – Damage etc to be minimised**

This clause imposes a duty on a police officer or authorised person to minimise damage as a result of enforcement action under the Act. There is also a duty to provide notice to the owner of anything damaged, setting out the details of the damage and advising that compensation may be sought.

Clause 126 – Compensation for exercise of enforcement powers

This clause allows a person to claim compensation from the Territory and a court to order compensation be paid to the owner of a thing that has been damaged through an enforcement action if it would be just, under the circumstances, to do so.

PART 5 Notification and review of decisions**Clause 127 – What is a *reviewable decision*?—pt 5**

This clause defines the meaning of reviewable decision for the purposes of Part 5 of the Act. All decisions listed in Schedule 1, column 3 under a provision of this Act mentioned in column 2 are decisions which are reviewable for the purposes of the *ACT Civil and Administrative Tribunal Act 2008*.

Clause 128 – Reviewable decision notices

This clause requires the director-general to give a reviewable decision notice to the relevant entity (schedule 1, column 4), in relation to a reviewable decision that has been made.

The director-general must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

The requirements for a reviewable decision notice are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

Clause 129 – Applications for review

This clause establishes that a person receiving a reviewable decision notice, or any other person whose interests are affected by the decision, can make an application to the ACT Civil and Administrative Tribunal for review of a listed reviewable decision.

PART 6 Miscellaneous

Clause 130 – Determination of fees etc

This clause gives the Minister the power to determine fees for this Act.

In addition, the Minister can determine the annual percentage rate at which interest payable under section 66 (4) and the annual percentage rate at which interest accruing under section 67 (a) is to be calculated. These provisions relate to the financial assurances.

These determinations are disallowable instruments.

Clause 131 – Approved forms

This clause gives the director-general power to approve forms for this Act. If the director-general approves a form for a particular purpose, the approved form must be used for that purpose.

An approved form is a notifiable instrument.

Clause 132 – Regulation-making power

The Executive may make regulations for this Act. Regulations must be notified.

Clause 133 – Legislation amended-sch 2

This Clause provides for consequential amendments to other Legislation.

Clause 134 – Legislation repealed

This clause is a technical provision which repeals *The Roads and Public Places Act 1937* and all legislative instruments made under that Act.

PART 20 Transitional—Roads and Public Places Act 1937

This part provides transitional provisions that determine the treatment of matters decided under the *Roads and Public Places Act 1937* before the commencement of the new *Public Unleased Land Act 2012*.

Clause 200 – Definitions –pt 20

This clause defines the commencement day for the purposes of this part of the bill making it the day the *Public Unleased Land Act 2012* commences.

Clause 201 – Transitional –permissions to use closed road to be closed road approvals

This clause establishes a transitional arrangement ensuring that current permissions to use closed roads made under the *Roads and Public Places Act 1937* is taken to be a closed road approval on the commencement of the new Act.

As part of the transitional arrangements the closed road approval will be taken to expire on the day stated in the permission and cannot be amended, transferred or renewed.

Clause 202 – Transitional – permissions to interfere etc be work approvals

This clause establishes a transitional arrangement ensuring that current permissions granted under the *Roads and Public Places Act 1937* to interfere with a public place or other thing, or to excavate in a public place, or permissions under section 9 of the *Roads and Public Places Act 1937* are taken to be work approvals under the same conditions and terms on the commencement of the new Act.

As part of the transitional arrangements the work approval will be taken to expire on the day stated in the permission and cannot be amended, transferred or renewed.

Clause 203 – Transitional – permissions to exhibit advertisements to be sign approvals

This clause establishes a transitional arrangement ensuring that current permissions to exhibit an advertisement or notice under the *Roads and Public Places Act 1937* is taken to be a sign approval on the commencement of the new Act.

As part of the transitional arrangements the sign approval will be taken to expire on the day stated in the permission and cannot be amended, transferred or renewed.

Clause 204 – Transitional – old permits to be public unleased land permits

This clause establishes a transitional arrangement ensuring that current permits to use public land under the *Roads and Public Places Act 1937* are taken to be public unleased land permits on the commencement of the new Act.

As part of the transitional arrangements the public Unleased Land permit will be taken to expire on the day stated in the permit and cannot be amended, transferred or renewed.

Clause 205 – Expiry-pt 20

This provides that Part 5 will expire after two years. Part 5 provides transitional provisions and as such is only kept in the Act for a limited period of time.

SCHEDULE 1 Reviewable Decisions

This lists the reviewable decisions, that can be reviewed in the ACT Civil and Administrative Tribunal (ACAT).

SCHEDULE 2 Consequential amendments

This sets out all the consequential amendments required for the following pieces of legislations

Part 2.1 Building Act 2004

Clause 2.1 – Dictionary, definition of Land, paragraph (b)

This is a technical amendment updating the definition of land as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.2– Dictionary, definition of owner, paragraph (d)

This is a technical amendment updating the definition of owner as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Part 2.2 *Crimes Act 1900*

Clause 2.3 – Section 119(3), definition of public road

This is a technical amendment updating the definition of public road as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Part 2.3 *Domestic Animals Act 2000*

Clause 2.3 – Dictionary, definition of *public place*, paragraph (a)

This is a technical amendment updating the definition of public place as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.5 – Dictionary, new definition of *public unleased land*

This is a technical amendment inserting a definition of public unleased land.

Part 2.4 *Gungahlin Drive Extension Authorisation Regulation 2004*

Clause 2.6 – Section 4 (c)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Part 2.5 *Hawkers Act 2003*

Clause 2.7 – Section 4(a)(ii)

This is a technical amendment updating reference to a public unleased land permit as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.8 – Section 23 Heading

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.9 – Section 23 (1) (a) and (b)

This is a technical amendment updating reference in legislation in relation to closed roads and work approvals as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.10 – Section 26(2)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.11 – Section 40(1) (b)

This is a technical amendment updating reference to the appointment of a person under the *Public Unleased Land Act 2012*.

Clause 2.12 – Section 42 (6), definition of identity card, new paragraph (aa)

Inserts a provision which identifies an authorised person under the *Public Unleased Land Act 2012* by their identify card.

Part 2.6 *Liquor Regulation 2010*

Clause 2.13 – Section 6 (2) (d)

This is a technical amendment updating reference to a public unleased land permit as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.14 – Schedule 1, section 1.9(3) and (4)

This is a technical amendment updating reference to a public unleased land permit as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.15 – Dictionary, definition of *public place permit* and note

This is a technical amendment updating the definition of *public unleased land permit* as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Part 2.7 *Planning and Development Act 2007*

Clause 2.16 – Section 7 (1), definition of development, paragraph (g)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.17 - Section 134 (6)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.18 – Section 134 (8), definition of *authorised use*, paragraph (a) (iii) and (iv)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.19 – Section 204 (1) (b) (iii) and (iv)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.20 – Section 204 93) (b)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.21 – Section 204 (4)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.22 – Section 305 (a) and (b)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.23 – Schedule 2, item 5

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Part 2.8 *Planning and Development Regulation 2008*

Clause 2.24 – Section 29 (h)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.25 – Schedule 1, section 1.67, note 3

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.26 – Schedule 1, section 1.68

This is a technical amendment updating reference to legislation and definition of public unleased land as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.27 – Schedule 1 Section 1.69, note 3

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.28 – Schedule 1, section 1.104 (1) (d), note 3

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Part 2.9 *Surveyors Act 2007*

Clause 2.29 – Dictionary, new definitions of public unleased land and public road

This is a technical amendment updating the definition of public unleased land and public road as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.30 – Dictionary, definition of survey, paragraph (c)

This is a technical amendment updating the terminology as a result of changes to the dictionary under clause 2.29.

Part 2.10 *Tree Protection Act 2005*

Clause 2.31 – Section 19(1) (d) (iv)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Part 2.11 *Trespass on Territory Land Act 1932*

Clause 2.32 – Section 8A and 8B

Sections 8A and 8B are removed. These sections are antiquated provisions that provided for the permitted use of unleased public land. These provisions have not been used for many years in favour of the provisions on the placement of objects on public land contained in the *Roads and Public Places Act 1937*. The review and modernisation of the provisions in the *Roads and Public Places Act* identified these sections of the *Trespass to Territory Land Act* as no longer relevant or functional.

Clause 2.33 – Section 8C (1) (c)

This clause removes a provision consequential to the repealed sections 8A and 8B (see clause 2.32).

Part 2.12 *Uncollected Goods Act 1996*

Clause 2.34 – Section 14 (2) (b)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Part 2.13 *Unit Titles Act 2001*

Clause 2.35 – Section 20(1)(d)

This is a technical amendment updating terminology as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.36 – Division 4.3 heading

This is a technical amendment updating terminology as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.37 – Section 37A heading

This is a technical amendment updating terminology as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.38 – Section 37A(1)(b)

This is a technical amendment updating terminology as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Clause 2.39 – Dictionary, definition of *public place*

This is a technical amendment updating the definition of public place as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Part 2.14 *Unit Titles Regulation 2001*

Clause 2.40 – Section 2E(1)(h)

This is a technical amendment updating reference to legislation as a consequence of the establishment of the *Public Unleased Land Act 2012*.

Dictionary

The Dictionary defines terms used in this bill as provided by clause 3.