

**2013**

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

**PUBLIC UNLEASED LAND BILL 2012**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

**Presented by  
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## **Introduction**

This supplementary explanatory statement relates to the *Public Unleased Land Bill 2012* as presented to the Legislative Assembly. It is intended to be read in addition to the Explanatory Statement tabled with the Bill.

This supplementary explanatory statement has been prepared in response to comments made by the Scrutiny of Bills Committee. The statement provides additional clarification about the defences available to the strict liability offences created by the Bill, and a justification for the limitation on the right to privacy created by enforcement powers in the Bill.

## **Strict liability offences – intervening events**

The Explanatory Statement tabled with the Bill notes that mistake of fact is a defence to the strict liability offences in the Bill, under section 36 of the *Criminal Code 2002*.

The defence of an intervening conduct or event is also available in relation to the strict liability offences in the Bill. Under section 39 of the *Criminal Code 2002*, a person is not responsible for strict liability offences if:

- the physical element of the offence is brought about by someone else over whom the person has no control, or by a non-human act or event over which the person has no control; or
- the person could not reasonably have been expected to guard against the bringing about of the physical element.

Section 39 of the *Criminal Code 2002* applies to every strict liability offence provision in the Bill.

## **Enforcement – Human Rights Implications**

Clause 107(1)(f) gives authorised people under the Act the power to enter premises without a warrant, but only if the authorised person reasonably believes that the circumstances are so serious and urgent that immediate entry is necessary.

This section engages the right to privacy under section 12(a) of the *Human Rights Act 2004*, because it gives authorised people a power to enter homes without a warrant in limited circumstances. Section 12(a) provides that everyone has a “right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.”

Clause 107(1)(f) is a reasonable limitation on the right privacy under section 28 of the Human Rights Act because of the limited circumstances in which it applies, and the important public purpose that it serves. The limitations on privacy created by clause 107(1)(f) apply only to situations that a reasonable person could believe are so serious and urgent that entry cannot be delayed. This limitation recognises that important public interests, such as preventing serious harm to people or property, sometimes require immediate action. Outside of situations of sufficient urgency or gravity, the normal restrictions on entry to premises apply.