

2004

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

ROADS AND PUBLIC PLACES (VANDALISM) AMENDMENT BILL 2004

Explanatory Statement

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Outline

This Bill amends the Roads and Public Places Act 1936 (RPPA) to empower:

- A person authorised by the chief executive to rapidly remove graffiti from property on leased Territory land, that is both visible and accessible from a public place whether or not the owner or occupier of the land has agreed to the removal work being carried out; and
- A roads and public places officer to rapidly remove vehicles that are suspected to be abandoned, from public land upon giving 2 days notice to the registered operator of the vehicle.

Strict Liability Offences

The Bill includes a strict liability offence in new section 12F. A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for any of the physical elements of the offence. That means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code provides that other defences may still be available for use in strict liability offences. Strict liability offences do not have a mental element, termed ‘mens rea’. However, the actus reus, the physical actions, do have a mental element of their own, for example, voluntariness. For that reason, the general common law defences of insanity and automatism still apply as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

CLAUSE NOTES

Clauses 1 to 4 – Formal clauses

Clauses 1 to 4 are formal clauses which:

- state the name of the Act being created;
- state the name of the Act being amended;
- provide for commencement of the Act;
- explain that the provisions of *Criminal Code 2002* and the *Legislation Act 2000* apply to offence provisions in the Act.

Clause 5 – inserts two new sections in the *Roads and Public Places Act 1936* (the RPPA) to facilitate the more rapid removal of vehicles, suspected of being abandoned, from a public place, to a safe retention area, by reducing from 7 to 2 days, the time allowed for the owner to remove the vehicle. Abandoned vehicles are often the target of opportunistic vandals, who also often damage the surrounding area. The rapid removal of abandoned vehicles is an important part of the government’s strategy to combat vandalism.

Roads and public places officers currently rely on section 12F of the RPPA, to remove abandoned vehicles from public land. Section 12F empowers a roads

and public places officer to give the owner of a prescribed object notice that they have 7 days in which to remove the object from a public place. If the owner does not comply with the notice, the officer may remove the object and place it in a safe retention area.

New section 12E empowers a roads and public places officer to remove from a public place a vehicle that is suspected, on reasonable grounds, of being abandoned. However, if there is a registered operator for the vehicle, the vehicle may only be moved upon giving the registered operator 2 days written notice. A registered operator is a person who is listed as the operator of the vehicle on the Road Transport Authority's registrable vehicle register, or a similar register of another jurisdiction.

The notice given to the registered operator must require the person to remove the vehicle within 2 days, or if they have disposed of the vehicle, disclose the names and address of anyone that the person believes is an owner of the vehicle within 7 days. It is a strict liability offence to fail to provide this information under **new section 12F**.

New section 12(4)(b) does not prevent a roads and public places officer from removing a vehicle after 2 days, where written notice has been given to the registered operator under **s 12E(3)**.

Police and authorised persons may continue to immediately move an unattended vehicle from a road or road related area if the vehicle is unlawfully parked, or causing, or likely to cause, a danger to the public, or unreasonable obstruction to other users of the road or road related area (see 32 of the *Road Transport (Safety and Traffic Management) Act 1999*).

Clause 6 – substitutes a new heading for section 12F that more accurately reflects the contents of the provision, and renumbers the provision as s 12G.

Clause 7 – makes a consequential amendment to subsection 12F(4) as a result of the renumbering of the provisions. The clause also inserts a new provision, which prescribes how items removed under new section 12E (see clause 5) and 12G (removal of signs and other items from public places, see clause 6) are to be treated once placed in a retention area, and when they can be sold, or disposed of.

New section 12F provides that once an object, sign or vehicle is placed in a retention area, it is taken to be uncollected goods for the purposes of the *Uncollected Goods Act 1996*. The Minister may dispose of the goods in accordance with the Act.

Clause 8 – renumbers section 12G (prescribed objects) as section 12I and updates the cross reference to the definition of prescribed object.

Clause 9 – Inserts two new sections, 14A and 14B in the RPPA, to facilitate the rapid removal of graffiti from property on leased Territory land visible and accessible from a public place.

New section 14A provides that an authorised person may remove graffiti from property on leased Territory land visible from a public place, with or without the agreement of the occupier of the land. However, the graffiti removal work may only be carried out without the agreement of the occupier of the land if, immediately before the work is to be carried out, the officer takes reasonable steps to notify of the occupier of the work. The work must also be carried out from a public place.

Subsections 14A(6) and (7) require the authorised person to give the occupier written notice that the graffiti removal work has occurred. The notice must include information notifying the occupier of the effect of new section 14B.

Subsection 14A(8) makes it clear that the new provisions are intended to be facilitative only, and does not place an obligation on the Territory to carry out graffiti removal work.

New section 14B provides that the cost of the graffiti removal work is payable by the Territory, and that the Territory will be liable for any damage caused to the property in carrying out the graffiti removal work (with the exception of minor damage that is incidental to the removal of the graffiti). To remove any doubt, new section 14B also makes it clear that this provision does not require the Territory to restore any property to its former state before the graffiti was applied to it. The Territory will not be liable for any failure to completely remove the graffiti.

Clause 10 – makes a consequential amendment to section 15U, to make it clear that for the purposes of the section, ‘vehicle’ is defined in accordance with the broader definition in the Hawkers Act 2003. Section 15U provides that a person is not required to hold a permit to park a vehicle, under the *Roads and Public Places Act 1936*, if the person holds a licence under the Hawkers Act, and is acting in accordance with that licence.

A vehicle, for the purposes of the Hawkers Act, is defined to mean any means of transporting people or goods, and includes an animal. The definition of ‘vehicle’ included in the RPPA, is restricted to a vehicle on wheels (other than a vehicle of railways or tramways).

Clause 11 – expands note 2 of the Dictionary to highlight that the *Legislation Act 2001*, also defines a ‘penalty unit’, ‘property’ and ‘Territory Land’.

Clause 12 – inserts into the Dictionary a new definition of ‘vehicle’.