

2011

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

**MAGISTRATES COURT (WORK HEALTH AND SAFETY INFRINGEMENT
NOTICES) REGULATION 2011**

SUBORDINATE LAW SL2011-38

EXPLANATORY STATEMENT

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OVERVIEW

Part 3.8 of the *Magistrates Court Act 1930* provides that offences prescribed under a regulation made under that Act can be dealt with by way of an infringement notice.

The *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* will be made under that Act and will enable infringement notices to be issued for prescribed offences under the *Work Health and Safety Act 2011*, and, for prescribed offences under the *Work Health and Safety Regulation 2011*.

The *Work Health and Safety (Consequential Amendments) Act 2011* repeals the *Work Safety Act 2008* and the associated regulations made under it including the *Work Health and Safety Regulation 2011*. The *Work Health and Safety Act 2011* and associated regulations will then replace the *Work Safety Act 2008* from the date of commencement. This Regulation will enable infringement notices to be issued for a number of offences under the new laws.

The infringement notice system is intended to provide an alternative to prosecution where it is deemed that an infringement notice imposing a monetary fine will be sufficient rather than taking the matter before the courts. Under the *Magistrates Court Act 1930* a person authorised to issue an infringement notice for an offence has discretion to decide if or not to issue a notice. Public servants appointed as inspectors under the *Work Health and Safety Act 2011* are authorised to issue infringement notices.

SUMMARY OF CLAUSES

Clause 1—Name of regulation—provides that the regulation is called the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*.

Clause 2—Commencement—provides that the regulation commences on 1 January 2012.

Clause 3—Dictionary—provides that the dictionary at the end of the regulation is part of the regulation. The dictionary defines certain terms used in the regulation.

A definition in the dictionary applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see *Legislation Act*, s 155 and s 156 (1)).

Clause 4—Notes—provides that a note included in the regulation is, in law, not part of the regulation: it is purely explanatory. See the *Legislation Act*, s 127 (1), (4) and (5) for the legal status of notes.

Clause 5—Purpose of regulation—provides that the purpose of the regulation is to allow for infringement notices under the *Magistrates Court Act 1930*, part 3.8 for certain offences against the *work health and safety legislation*.

Work safety legislation is defined in the dictionary to mean the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*.

Clause 6—Administering authority—provides that the regulator for the *Work Health and Safety Act 2011*, as per the ACT’s Administrative Arrangements, is the administering authority in relation to the issuing of an infringement notice under the regulation.

Clause 7—Infringement notice offences—provides that the *Magistrates Court Act 1930*, part 3.8 applies to an offence against a provision of the *work health and safety legislation* mentioned in the regulation at schedule 1, column 2.

Clause 8—Infringement notice penalties—provides that the penalty payable for an offence against the work health and safety legislation under an infringement notice for the offence, is the amount mentioned in schedule 1, column 4 for the offence, or, for a corporation, five times that amount.

The section also prescribes that the cost of service of a relevant reminder notice under the *Magistrates Court Act 1930*, for a relevant infringement notice offence is \$34. That is the amount payable by the person to whom the reminder notice is issued.

Clause 9—Contents of infringement notices—identifying authorised person— provides that the infringement notice must fully identify the authorised person. Such identification could be by stating the authorised person’s full name, the person’s surname and initials, or, by stating a unique number given, for the regulation, to the authorised person by the administering authority.

Clause 10—Contents of infringement notices—other information—provides that an infringement notice served on a *company* must include the company’s ACN. In this section *company* means a company registered under the *Corporations Act 2001*. The requirement is additional to the requirement under the *Magistrates Court Act 1930*, s 121 (1) (c).

This section also provides that, in this section, *company* means a company registered under the Corporations Act.

Clause 11—Contents of reminder notice—identifying authorised person— provides that a reminder notice must fully identify the authorised person. Such identification could be by stating the authorised person’s full name, the person’s surname and initials, or, by stating a unique number given, for the regulation, to the authorised person by the administering authority.

Clause 12—Authorised people for infringement notice offences—prescribes that an inspector may serve a relevant infringement notice and a relevant reminder notice under the regulation. An *inspector* is defined in the *Work Health and Safety Act 2011* dictionary under that Act and is a person appointed an inspector for the Act.

Schedule 1— Work health and safety legislation infringement notice offences and penalties

This schedule lists the infringement notice offences and penalties under clauses 7 and 8 of this Regulation.

The offences that are proposed to be dealt with by way of an infringement notice under the regulation are relatively minor in nature, and have infringement notices penalties ranging from \$144 to \$720 for individuals, and \$720 to \$3600 for corporations.

Through the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*, these penalty values have been set so that the nominal amount on an infringement notice is either 12% of the maximum fine stipulated in the offence; or capped at 1.44% for the more serious offences, such as not complying with an improvement notice (section 193 of the *Work Health and Safety Act 2011*).

The offences are all strict liability, and breaches should be readily apparent without the need for further inquiry, or the need to weigh up competing or contradictory evidence.

Part 1.1 of Schedule 1 lists the infringement notice offences under the *Work Health and Safety Act 2011*.

Part 1.2 lists the infringement notice offences under the *Work Health and Safety Regulation 2011*. For further details on each listed provision refer to the respective explanatory statements as notified.