

2012

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**MAGISTRATES COURT (WORKING WITH VULNERABLE PEOPLE
INFRINGEMENT NOTICES) REGULATION 2012**

SUBORDINATE LAW SL2012-3

EXPLANATORY STATEMENT

**Circulated by authority of
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Attorney-General**

Magistrates Court (Working With Vulnerable People Infringement Notices) Regulation 2012

Overview

The Part 3.8 of the *Magistrates Court Act 1930* provides that offences prescribed by a regulation made under the Magistrates Court Act can be dealt with by way of an infringement notice. The *Magistrates Court (Working with Vulnerable People Infringement Notices) Regulation 2012* is being made under Part 3.8 of the Magistrates Court Act and will enable infringement notices to be issued for the offences of the *Working with Vulnerable People (Background Checking) Act 2011* (the Act).

Infringement notices are intended to provide an alternative to prosecution. Under the Magistrates Court Act a person authorised to issue an infringement notice for an offence has the discretion to decide whether or not to issue a notice.

The offences to which this regulation applies are certain strict liability offences in the Act. Infringement notices may be issued to individuals and companies providing activities or services which are regulated under the Act. The Act is the primary law in the ACT which provides for background checking as part of a risk assessment of people working with, or wanting to work with, vulnerable people in the ACT.

Summary of Clauses

Clause 1 – Name of regulations – provides that the regulation is called the *Magistrates Court (Working with Vulnerable People Infringement Notices) Regulation 2012*.

Clause 2 – Commencement – provides that the regulation commences twelve months after the notification day of the *Working With Vulnerable People (Background Checking) Act 2011*.

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.

The dictionary defines the terms *investigator* and *Vulnerable People Act*.

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, purely explanatory and is not part of the regulation. See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Clause 5 – Purpose of Regulation – provides 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 Act.

Clause 6 – Administering authority – provides that the administering authority for an infringement notice offence against the Act is the commissioner for fair trading.

Clause 7 – Infringement notice offences – provides that infringement notices can be issued for the offences mentioned in the regulation at schedule 1, column 2.

Clause 8 – Infringement notice penalties – provides for the penalty that is payable by an individual or a corporation with an infringement notice. The penalty for individuals for each infringement notice is set in column 4 of schedule 1. The respective penalty for corporations in the same circumstances is five times the amount prescribed in column 4 of schedule 1.

This section also prescribes that the cost of service of a relevant reminder notice under the Magistrates Court Act, 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 identify the authorised person serving the notice by their full name, or their surname and initials, and the unique number given to them 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 (Australian Company Number). . 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 notices – identifying authorised person – provides that the infringement notice must identify the authorised person who served the notice by their full name, or their surname and initials, and the unique number given to them by the administering authority.

Clause 12 - Authorised people for infringement notice offences – provides that investigators under the Act are authorised to service notices and reminders.

Schedule 1 –

The schedule lists the infringement notice offences and penalties under the *Magistrates Court Act 1930* as prescribed by sections 7 and 8.

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 \$100 to \$500 for individuals. These penalty values have been set so that the nominal amount on an infringement notice is just over 9% of the maximum fine stipulated in the offence.

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.