

Australian Capital Territory

# Magistrates Court (Fair Trading Motor Vehicle Repair Industry Infringement Notices) Regulation 2012

Subordinate law SL2012–15

made under the

***Magistrates Court Act 1930, part 3.8 (Infringement notices for certain offences)***

## EXPLANATORY STATEMENT

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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 (Fair Trading Motor Vehicle Repair Industry Infringement Notices) Regulation 2012* is made under that Act, and will allow infringement notices to be issued for prescribed offences under the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (the Act).

The Act provides for the licensing and regulation of people in the motor vehicle repair industry. The Act develops a business licensing model for people carrying on business as motor vehicle repairers in the ACT.

This Regulation will allow infringement notices to be issued for a number of offences under the Act, including carrying on a business as a motor vehicle repairer without a licence, advertising the performance of motor vehicle repair work for reward without a licence, failing to include a licence number and address of premises in a licensee's advertising, and failing to return an amended, suspended or cancelled licence to the Commissioner for Fair Trading.

The ability to issue infringement notices for offences against the Act allows immediate action to be taken against motor vehicle repairers who fail to discharge their licensing and advertising obligations.

These infringement notices will provide non-compliant repairers with the opportunity to accept a reduced penalty and avoid criminal conviction in relation to the suspected offence, ensuring that specified offences can be dealt with in a regulatory rather than criminal framework.

## Clause Notes

### 1 Name of regulation

This clause declares the name of the regulation, the *Magistrates Court (Fair Trading Motor Vehicle Repair Industry Infringement Notices) Regulation 2012*.

### 2 Commencement

This clause provides that the regulation will commence on the day following its notification.

### 3 Dictionary

This clause 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 2001* s 155 and 156(1)).

### 4 Notes

This clause provides that a note included in the regulation is, in law, not part of the regulation: it is purely explanatory. See the *Legislation Act 2001* s 127(1), (4) and (5) for the legal status of notes.

### 5 Purpose of regulation

This clause provides that the purpose of this regulation is to create a system of infringement notices under part 3.8 of the *Magistrates Court Act 1930* for certain offences against the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*.

### 6 Administering authority

This clause provides that the administering authority for infringement notice offences against the Act is the commissioner for fair trading.

### 7 Infringement notice offences

This clause provides that part 3.8 of the *Magistrates Court Act 1930* applies to an offence against a provision of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* mentioned in the regulation at schedule 1, column 2.

### 8 Infringement notice penalties

This clause provides that the penalty payable for an offence against the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*, 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 amounts mentioned in schedule 1 for infringement penalties range from \$100 to \$500 for individuals, making the infringement notice penalties for corporations from \$500 to \$2,500.

This clause 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 amount is payable by the person to whom the reminder notice is issued.

## **9 Contents of infringement notices—identifying authorised person**

This clause provides that the infringement notice must fully identify the authorised person. The authorised person can be identified by stating their full name or surname and initials, or by stating any unique number given to the authorised person by the administering authority for the regulation.

## **10 Contents of infringement notices—other information**

This clause 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* (Cwlth). This requirement is additional to the requirement under the *Magistrates Court Act 1930*, s 121(1)(c).

## **11 Contents of reminder notices—identifying authorised person**

This clause provides that a reminder notice must fully identify the authorised person. The authorised person can be identified by stating their full name or surname and initials, or by stating any unique number given to the authorised person by the administering authority for the regulation.

## **12 Authorised people for infringement notice offences**

This clause prescribes that an *investigator* may serve a relevant infringement notice and a relevant reminder notice under the regulation. An *investigator* is defined in the *Fair Trading (Australian Consumer Law) Act 1992* dictionary, and means the commissioner for fair trading, or a person appointed as an investigator under section 36 of the *Fair Trading (Australian Consumer Law) Act 1992*.

## **Schedule 1 Fair Trading (Motor Vehicle Repair Industry) Act 2010 infringement notice offences and penalties**

This schedule lists the infringement notice offences and penalties for clauses 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 notice penalties ranging from \$100 to \$500 for individuals, and \$500 to \$2,500 for corporations.

These penalty values have been set so that the nominal amount of an infringement notice is just over 9% of the maximum fine for the offence.

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

The offences listed are: section 8(1) (carrying on business as motor vehicle repairer while unlicensed); section 8(2) (carrying on business as motor vehicle repairer at premises while unlicensed); section 46 (advertising motor vehicle work for reward while unlicensed); section 47 (failing to include licence number and address of premises in advertising); and section 48 (failure to return amended, suspended or cancelled licence to commissioner).