

2015

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

**MAGISTRATES COURT (WORK HEALTH AND SAFETY INFRINGEMENT
NOTICES) AMENDMENT REGULATION 2015 (No 2)**

SL 2015-16

EXPLANATORY STATEMENT

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Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2015 (No 2)

Outline

The objective of the *Work Health and Safety Act 2011* (the WHS Act) is to provide a balanced and nationally consistent framework to secure the health and safety of workers and workplaces against harm to health, safety and welfare.

In conjunction with the WHS Act, the *Work Health and Safety Regulation 2011* (the WHS Regulation) provides regulatory requirements that support the WHS Act.

Chapter 8 of the WHS Regulation provides mechanisms for controlling work, health and safety risks related to work involving asbestos. These mechanisms include the application of a number of offences relating to the management of asbestos and associated risks and reporting obligations.

The *Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2015 (No 2)* (the Regulation) is made under part 3.8 of the *Magistrates Court Act 1930* to create a system of infringement notices for certain offences against the WHS Act.

The Regulation amends schedule 1, part 1.2 of the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* by inserting 32 nationally harmonised offences for which infringement notices can be issued.

The infringement notice system is intended to provide an alternative to prosecution where it is deemed appropriate to impose a monetary fine rather than taking the matter before the court. Under the *Magistrates Court Act*, a person authorised to issue an infringement notice for an offence has discretion to decide whether to issue a notice.

Section 6A of the WHS Regulation provides that, unless otherwise specified, the physical elements of an offence are strict liability. For the offences in the Regulation, the prosecution is required to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made the conduct innocent, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.

The rationale for these strict liability offences is that people who owe work safety duties can be expected to be aware of their duties and obligations to the wider public. Breaches should be apparent without the need for further inquiry, or the need to weigh up competing or contradictory evidence.

Failure to comply with any requirement in the Regulation is an offence. As these offences arise in the regulatory context where public safety is paramount, there is an interest in ensuring regulatory schemes are observed, and in this context the sanction of criminal penalties is justified.

**Magistrates Court (Work Health and Safety Infringement Notices)
Amendment Regulation 2015 (No 2)**

Detail

Notes on clauses

Clause 1—Name of regulation

This is a technical clause that explains that the regulation is the *Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2015 (No 2)*.

Clause 2—Commencement

This clause provides that the regulation commences on the day after its notification day.

Clause 3—Legislation amended

This clause provides that this regulation will amend the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*.

Clause 4—Schedule 1, part 1.2, items 101 and 102

This clause will amend schedule 1, part 1.2 to insert new items for which infringement notices may be issued in relation to the *Work Health and Safety Regulation 2011*.