

2018

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

**MAGISTRATES COURT (WORK HEALTH AND SAFETY INFRINGEMENT
NOTICES) AMENDMENT REGULATION 2018 (No 1)**

SL2018-7

EXPLANATORY STATEMENT

**Presented by
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Attorney-General**

Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2018 (No 1)

Outline

Part 3.8 of the *Magistrates Court Act 1930* provides for the issuing of infringement notices for offences listed in regulation. The *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* (WHS Infringement Notice Regulation) enables infringement notices to be issued for certain offences under the *Work Health and Safety Act 2011* (WHS Act) and *Work Health and Safety Regulation 2011* (WHS Regulation).

The WHS Act provides a balanced and nationally consistent framework to secure the health and safety of workers and workplaces. The WHS Regulation prescribes procedural or administrative requirements and sets out detailed requirements to support the duties under the WHS Act.

On 22 February 2018, a Bill to enact the *Work Health and Safety Legislation Amendment Act 2018* (WHS Amendment Act) was passed in the Legislative Assembly. On commencement of the WHS Amendment Act, the associated *Work Health and Safety Amendment Regulation 2018* (WHS Amendment Regulation) adopted the remaining chapters of the national model Work Health and Safety Regulations, chapter 7 (Hazardous Chemicals) and chapter 9 (Major Hazard Facilities), into the Territory's WHS Regulation.

The *Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2018 (No 1)* amends schedule 1, part 1.2 of the WHS Infringement Notice Regulation by providing that the *Magistrates Court Act 1930*, part 3.8 also applies to particular offences introduced by the WHS Amendment Regulation.

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 and are appropriately trained to be able issue such 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 health and 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.

All offences have been set consistent with the existing penalties applied under the WHS Infringement Notice Regulation and are less than 20% of the maximum penalty for the offence. This is consistent with ACT Government policy. As a result infringement notices penalties range from \$144 to \$720 for an individual and \$720 to \$3600 for a body corporate.

**Magistrates Court (Work Health and Safety Infringement Notices)
Amendment Regulation 2018 (No 1)**

Detail

Notes on clauses

Clause 1—Name of regulation—provides that the regulation is called the *Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2018 (No 1)*.

Clause 2—Commencement—provides that the regulation commences the day after its notification.

Clause 3—Legislation amended—provides that this regulation will amend the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*.

Clause 4—Schedule 1, part 1.2, new items 18A to 18D—amends schedule 1, part 1.2 to insert new items for which infringement notices may be issued in relation to section 79 and 80 (offences in relation to the risk of falls from heights) of the *Work Health and Safety Regulation 2011*.

Clause 5—Schedule 1, part 1.2, new items 100A to 100L— amends schedule 1, part 1.2 to insert new items for which infringement notices may be issued in relation to chapter 7 (hazardous chemicals) of the *Work Health and Safety Regulation 2011*.

Clause 6—Schedule 1, part 1.2, new items 134 to 140— amends schedule 1, part 1.2 to insert new items for which infringement notices may be issued in relation to chapter 9 (major hazard facilities) of the *Work Health and Safety Regulation 2011*.