

Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020

Subordinate law SL2020-12

made under the

Magistrates Court Act 1930, s 321 (Regulation-making power)

EXPLANATORY STATEMENT

Part 3.8 of the *Magistrates Court Act 1930* provides that offences prescribed by a regulation made under the Act can be dealt with by way of infringement notice. The *Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020* (the regulation) will enable infringement notices to be issued for an offence contrary to section 120(3) of the *Public Health Act 1997*.

While an emergency declaration under the *Public Health Act 1997* is in force, the Chief Health Officer may give any direction he or she considers to be necessary or desirable to alleviate the emergency. Section 120(3) provides that it is an offence to fail to comply with such a direction without reasonable excuse. On 16 March 2020, the Minister for Health declared a public health emergency due to the risk posed by the outbreak of COVID-19. That declaration has been extended and it is expected that there will be a continued need for the declaration to be further extended to ensure that measures can be taken to respond to the threat posed by COVID-19.

The infringement notice scheme created by this regulation will provide an alternative to prosecution when a person fails to comply with a direction of the Chief Health Officer where it is deemed that an infringement notice imposing a monetary fine is a sufficient penalty. The purpose of the scheme is to encourage compliance with the directions of the Chief Health Officer in relation to the COVID-19 emergency.

The infringement notice scheme will only apply to an offence where it involves a failure to comply with a Chief Health Officer direction made in relation to a COVID-19 emergency declaration. Such offences are not framed as strict liability offences, but it is considered that these offences are appropriate to be dealt with by infringement notice in the context of the COVID-19 emergency. Clear guidance will be provided to police officers and authorised persons regarding the application of the reasonable excuse provision to ensure human rights compliance in considering the issuing of an infringement notice, as set out below.. A sunset provision has also been included to

provide that the regulation will expire 12 months after the day it commences. These safeguards have been incorporated as the infringement notice scheme is intended to address the unprecedented scale and particular threat posed by the COVID-19 pandemic and is not intended to be used more generally for an offence against the *Public Health Act 1997*.

Authorised persons for issuing infringement notices for an offence against section 120(3) of the *Public Health Act 1997* are police officers, public health officers authorised to exercise emergency powers under section 121 of the *Public Health Act 1997* and other persons authorised to exercise emergency powers under section 121(2) of the *Public Health Act 1997*. An authorisation from the Chief Health Officer or her delegate is required for a public health officer or other person to be able to exercise the emergency powers and is only given to a limited number of suitable people.

Issuing of infringement notices by authorised persons under the Public Health Act will be subject to the oversight of the Access Canberra Regulatory Complaint Assessment Committee (RCAC). The RCAC can advise on the issuing of notices including whether the issue of an infringement notice is appropriate and proportionate response in the circumstances, having regard to a number of factors including (but not limited to) the nature of the offence, human rights impact, quality and weight of collected evidence, previous evidence of offending behaviour, and actions taken by an authorised officer.

A police officer or other authorised person for the purpose of the regulation, as a public authority under the *Human Rights Act 2004*, must give proper consideration to relevant human rights in making a decision, in accordance with section 40B of the *Human Rights Act 2004*. The Health Directorate, in consultation with ACT Policing, Access Canberra and the Human Rights Commission, is developing a guidance framework to assist authorised persons to assess a situation and determine when it is appropriate to issue an infringement notice.

This guidance, oversight, and the framing of specific directions made under section 120 of the *Public Health Act 1997* will ensure that the use of infringement notices does not have a discriminatory impact on vulnerable and disadvantaged people in our community.

The penalty payable for an infringement notice offence under the regulation is \$1000 for an individual and \$5000 for a corporation. In addition, an infringement notice under the regulation may only be issued against a person who is 18 years or older.

Clause notes

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020*.

Clause 2 Commencement

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

Clause 3 Dictionary

This clause provides that the dictionary at the end of the regulation is part of the regulation.

Clause 4 Notes

This clause provides that a note in the regulation is explanatory.

Clause 5 Purpose of regulation

This clause provides that the purpose of the regulation is to create an infringement notice scheme for certain offences against the *Public Health Act 1997*.

Clause 6 Administering authority

This clause provides that the administering authority for an infringement notice offence against the *Public Health Act 1997* is the director-general with responsibility for that Act.

Clause 7 Infringement notice offences

This clause provides that part 3.8 of the *Magistrates Court Act 1930* applies to an offence against section 120(3) of the *Public Health Act 1997* in circumstances where the offence relates to a direction given in relation to a declaration made because of COVID-19 and the offence is committed by a person who is 18 years or older.

Clause 8 Infringement notice penalties

This clause provides that the penalty payable for an offence against section 120(3) of the *Public Health Act 1997* under an infringement notice is \$1000 for an individual and \$5000 for a corporation. The clause provides that the cost of serving a reminder notice for an infringement notice offence is \$34.

Clause 9 Contents of infringement notices – identifying authorised person

This clause provides that an infringement notice served on a person must identify the authorised person who is serving the infringement notice. For an authorised person who is a police officer, the infringement notice must identify their police officer service number. For any other authorised person, the infringement notice must specify the authorised person's full name, surname and initials or unique number given to the authorised person by the administering authority for the purpose of the regulation.

Clause 10 Contents of infringement notices – other information

This clause provides that an infringement notice served on a company must include the company's ACN.

Clause 11 Contents of reminder notices – identifying authorised person

This clause provides that a reminder notice served on a person must identify the authorised person who is serving the reminder notice. For an authorised person who is a police officer the notice must identify their police officer service. For any other authorised person, the reminder notice must specify the authorised person's full name, surname and initials or unique number given to the authorised person by the administering authority for the purpose of the regulation.

Clause 12 Authorised people for infringement notice offences

This clause provides that an authorised person may serve an infringement notice or reminder notice for an infringement notice offence against the *Public Health Act 1997*. Authorised person is defined in the dictionary of the regulation.

Clause 13 Expiry

This clause provides that the regulation expires 12 months after the day it commences.

Dictionary

The dictionary of the regulation provides a definition for the term authorised person.