

Magistrates Court (Public Health (COVID-19) Infringement Notices) Amendment Regulation 2021 (No 1)

Subordinate law SL2021-6

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) was created to enable infringement notices to be issued for an offence contrary to section 120 (4) 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 (4) 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 periodically 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.

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.

This instrument amends the expiry period for the regulation. The regulation, which currently expires on 3 April 2021, will be amended to remain temporary and to expire at the end of a 12-month period during which no COVID-19 public health emergency declaration has been in force.

Amending the expiry provision in this way will ensure that issuing an infringement notice remains an enforcement option through the emergency response period for the COVID-19 pandemic. This is also consistent with the approach taken with respect to other temporary emergency response measures passed by the ACT Legislative Assembly in 2020 and recently amended through the *COVID-19 Emergency Response Legislation Amendment Act 2021*.

As referred to in Explanatory Statement for the Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020, the issuing of infringement notices are subject to the oversight of the Access Canberra Regulatory Complaint Assessment Committee (RCAC) to inform any decisions taken by an authorised officer.

Human rights implication

Authorised officers and police officers must consider relevant human rights in making a decision as required under the *Human Rights Act 2004*, section 40B (Public authorities must act consistently with human rights).

The Amendment Regulation engages and may promote the following rights under the *Human Rights Act 2004* including:

- a. right to life (section 9);
- b. right to liberty and security of person (section 18);
- c. right to a fair trial (section 21);
- d. rights in criminal proceedings (section 22); and
- e. right to work and other work-related rights.

The Amendment Regulation supports these rights by extending the operation of the Regulation so that in dealing with an alleged failure to follow a direction under the *Public Health Act 1997*, an authorised officer or police officer retains the option of issuing an infringement notice rather than commencing a proceeding in the ACT Magistrates Court.

As an alternative to a prosecution, the payment of the infringement notice bars the prosecution of the person and the person is not taken to have been convicted of the offence (see *Magistrates Court Act 1930*, section 125 (Effect of payment of

infringement notice penalty). Further, the *Magistrates Court Act 1930*, Part 3.8.4 (Disputing liability for infringement notices) sets out the mechanism for a person to dispute liability for the infringement notice and this must appear in the infringement notice issued to the person. Where a person disputes liability and the administering authority determines that an information should be laid, the person is able to defend the charge. This mechanism together with other provisions of the existing criminal law supports the person's right to a fair trial and rights in criminal proceedings including the presumption of innocence under section 22 (1).

Additionally, extending the infringement notice scheme may engage and promote the right to life and the right to work and other work-related rights. Extending the infringement notice scheme allows the regulation to stay in the statute book, to continue to act as a deterrent for individuals and businesses, and to continue to be used by authorised officers to enforce compliance with public health directions to ensure a safe place of business to protect the lives of the ACT community while the COVID-19 pandemic is active.

Clause notes

Clause 1 Name or Regulation

This clause provides that the name of the regulation is the Magistrates Court (Public Health (COVID-19) Infringement Notices) Amendment Regulation 2021 (No 1).

Clause 2 Commencement

This clause provides that the regulation commences the day after it is notified on the ACT Legislation Register.

Clause 3 Legislation amended

This instrument amends the *Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020*.

Clause 4 Section 13

This clause amends the expiry of the *Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020*, to expire at the end of a 12-month period during which no COVID-19 public health emergency declaration has been in force.