

Australian Capital Territory

Magistrates Court (Plastic Reduction Infringement Notices) Regulation 2021

Subordinate Law SL2021-12

made under the

Magistrates Court Act 1930

EXPLANATORY STATEMENT

This explanatory statement relates to the *Magistrates Court (Plastic Reduction Infringement Notices) Regulation 2021* as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the regulation.

This explanatory statement must be read in conjunction with the regulation. It is not, and not intended to be, a comprehensive description of the regulation. What is written about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The *Magistrates Court (Plastic Reduction Infringement Notices) Regulation 2021* is being made under part 3.8 of the *Magistrates Court Act 1930* and will enable infringement notices to be issued for offences against the *Plastic Reduction Act 2021*. Infringement notices are intended to provide an alternative to prosecution where it is deemed that an infringement notice imposing a monetary fine would be sufficient rather than taking the matter before the courts.

This regulation enables authorised officers appointed under section 20 of the *Plastic Reduction Act 2021* to issue infringement notices and reminder notices. Under the *Magistrates Court Act* a person authorised to issue an infringement notice for an offence has the discretion to decide whether or not to issue a notice.

Human Rights Implications

This regulation contains strict liability offences, as such, it might be seen to engage the presumption of innocence. In a strict liability offence, there is no requirement to establish a fault element, such as intention, knowledge, recklessness, or negligence.

Strict liability offences arise in a regulatory context where for reasons such as consumer protection and public safety, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. Where a defendant can reasonably be expected to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. Section 22(1) of the *Human Rights Act 2004* provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

This regulation does not create any new offences; it facilitates the administration of strict liability offences already contained in the *Plastic Reduction Act 2021*. Without the ability to issue infringement notices, the only option available to the regulating authority is to prosecute offences through the courts. This is a serious response, and this regulation provides a method to achieve the policy purpose that is less restrictive on human rights.

Outline of provisions of the regulation

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Magistrates Court (Plastic Reduction Infringement Notices) Regulation 2021*.

Clause 2 Commencement

This clause provides that the commencement of the regulation will occur on 1 July 2021.

Clause 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*, sections 155 and 156 (1)).

Clause 4 Notes

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

Clause 5 Offences against the regulation—Application of the criminal code etc.

This clause provides that other legislation applies in relation to offences against this regulation, including the *Criminal Code* and *Legislation Act*.

Clause 6 Administering authority

This clause provides that the administering authority for an infringement notice offence under the regulation is the Director-General of Transport Canberra and City Services.

Clause 7 Infringement notice offences

This clause provides that the Magistrates Court Act, part 3.8, applies to an offence against a provision of the *Plastic Reduction Act 2021* mentioned in the regulation in schedule 1, column 2.

Clause 8 Infringement notice penalties

This clause provides for the penalty that is payable by an individual with an infringement notice. The penalty payable by an individual for each infringement notice is set in column 4 of schedule 1, while the penalty payable by a corporation is 5 times the amount mentioned in schedule 1, column 4.

This clause also prescribes that the cost of service of 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 must identify the authorised person who served the notice by the authorised person's full name or surname and initials or any unique number given to the authorised person by the administering authority.

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 and includes the definition of a company.

Clause 11 Contents of reminder notices—identifying authorised person

This clause provides that a reminder notice for an infringement notice offence must identify the authorised person by the authorised person's full name or surname and initials or any unique number given to the authorised person by the administering authority.

Clause 12 Authorised people for infringement notice offences

This clause provides that an authorised officer under the *Plastic Reduction Act 2021* may serve infringement notices and reminder notices for infringement notice offences against the *Plastic Reduction Act 2021*.

Under the *Plastic Reduction Act 2021*, the following people are considered to be authorised people:

- a. a person appointed as an authorised person of the *Plastic Reduction Act 2021*, section 20; or
- b. a person appointed as an investigator under the *Fair Trading (Australian Consumer Law) Act 1992*, section 36; or
- c. a public health officer authorised under the *Public Health Act 1997*, section 12A (2) as an authorised officer for the *Food Act 2001* or a provision of that Act.

Clause 13 Prescribed person – the Act, s135 (1)

This clause provides that the waste manager is a prescribed person for this regulation. Section 135 of the *Magistrates Court Act 1930* allows the administering authority for the regulation to delegate their power under to either a prescribed person or an authorised person.

Once the waste manager has delegated power, section 135 also allows the waste manager to further delegate powers, including to an authority within another directorate with authorised officers under the *Plastic Reduction Act 2021*.

The Waste Manager is a statutory position appointed under section 16 of the *Waste Management and Resource Recovery Act 2016*.

Schedule 1 Plastic Reduction Act 2021 infringement notice offences and penalties

The schedule lists the infringement notice offences and penalties under the *Plastic Reduction Act 2021* that are prescribed by sections 7 and 8 of the regulation.

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 \$32 to \$300 (for an individual) or \$160 to \$1,500 (for a corporation).

The penalties in this regulation are considerably less than the maximum nominal 20 per cent of the maximum fine permitted by the Guide for Framing Offences (which for the offence for supplying prohibited single-use plastic items would equate to \$1,600 for an individual). Instead, this has been fixed at \$300 which is more commensurate with a strict liability offence.