

Australian Capital Territory

# Magistrates Court (Planning Infringement Notices) Regulation 2023

Subordinate law SL2023-22

made under the

Magistrates Court Act 1930, s321

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Magistrates Court (Planning Infringement Notices) Regulation 2023* (the regulation) as made by the Executive. It has been prepared to assist the reader of the regulation and to help inform any debate on it. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

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

## OVERVIEW OF THE REGULATION

Part 3.8 of the *Magistrates Court Act 1930* creates a system of infringement notices for certain offences, as an alternative to prosecution. Under section 119 of the Act, regulations may be made prescribing offences as infringement notice offences.

The Regulation is made under that Act and will enable infringement notices to be issued for a number of offences under the *Planning Act 2023*.

Under the *Magistrates Court Act 1930* a person authorised to issue an infringement notice for an offence has discretion to decide whether or not to issue the notice. The regulation will enable the following kinds of offences to be dealt with by way of an infringement notice for each offence if a respective notice is duly issued and continues to have force—

- a person undertakes development without development approval under the *Planning Act 2023* and under that Act the development requires development approval;
- a person undertakes development, and the development is prohibited by the *Planning Act 2023*;
- a person undertakes development, for which the person has a conditional development approval under the *Planning Act 2023*, and the person does not comply with a condition of the development approval when undertaking the development;

- the territory planning authority gives a controlled activity order to a person, requiring the person to do, or not do, something stated in the order, and the person contravenes the order;
- under the *Planning Act 2023* the territory planning authority directs a person to carry out rectification work in relation to a controlled activity, and the person contravenes the direction;
- under the *Planning Act 2023* the territory planning authority directs a prohibition notice to the person, and the notice states that an activity must not be carried on by the person in relation to a place, and the person carries on the activity, or carries on the activity otherwise than in accordance with the notice, in relation to the place;
- under the *Planning Act 2023* an inspector lawfully requires a person to state the person's name and home address and the person fails to comply with the requirement.

## **SCRUTINY OF BILLS COMMITTEE PRINCIPLES AND HUMAN RIGHTS**

The infringement notice scheme created by this regulation will provide an alternative to prosecution when a person fails to comply with the *Planning Act 2023* in one of the circumstances set out above. In such circumstances 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 planning scheme enabled by the *Planning Act 2023*.

The infringement notice scheme will only apply to an offence in the following circumstances. It will apply where a person undertakes development without development approval under the *Planning Act 2023* and under that Act the development requires development approval and where a person undertakes development, and the development is prohibited by the *Planning Act 2023*. It is considered that these offences are appropriate to be dealt with by infringement notice. They are intended to maintain the integrity of the planning system so that development does not take place that has not been assessed by planning professionals to ensure that they meet the requirements of the *Planning Act 2023* and to prevent development from taking place that is clearly prohibited by the Act. It should be clear whether or not a development requires development approval or is development that is prohibited by the Act. Most of the requirements for approval have been carried across from the *Planning and Development Act 2007* and extensive education will be provided during the implementation of the Act and information will be available on the Territory Planning Authority's website.

The infringement notice scheme will apply where a proponent has been provided a direction under the *Planning Act 2023* and fails to comply with that direction. These circumstances include where a person undertakes development, for which the person has a conditional development approval under the *Planning Act 2023*, and the person does not comply with a condition of the development approval when undertaking the development; the territory planning authority gives a controlled activity order to a person, requiring the person to do, or not do, something stated in the order, and the person contravenes the order; the territory planning authority directs a person to carry out rectification work in relation to a controlled activity, and the person contravenes the direction; and the territory planning authority directs a prohibition notice to the person, and the notice states that an activity must not be carried on by the person in relation to a place, and the person carries on the activity, or carries on the activity otherwise than in accordance with the notice, in relation to the place. It is considered that these offences are appropriate to be dealt with by infringement notice. They are intended to ensure that a direction lawfully issued by an authorised person under the *Planning Act 2023* has been complied with. These offences are

intended to maintain the integrity of the planning system to enable planning system to deliver the best possible liveability, prosperity and wellbeing planning outcomes for the ACT community. It will be clear whether or not a development direction has been complied with or not. Most of the requirements for approval have been carried across from the *Planning and Development Act 2007* and extensive education will be provided during the implementation of the Act and information will be available on the Territory Planning Authority's website.

The infringement notice scheme will apply where an inspector authorised under the *Planning Act 2023* lawfully requires a person to state the person's name and home address and the person fails to comply with the requirement. It is considered that this offence is appropriate to be dealt with by infringement notice. Clear guidance will be provided to inspectors regarding their powers under the Act.

Issuing of infringement notices by authorised persons under the *Planning Act 2023* 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.

The framing of these offences under the *Planning Act 2023* seeks to ensure that the use of infringement notices does not have a discriminatory impact on vulnerable and disadvantaged people in the community. It is not considered that any of these provisions unreasonably limits an individual's human rights. If an individual's human rights are limited, any limitation is reasonable and justified.

## **CLAUSE NOTES**

### **Clause 1 Name of regulation**

This clause provides that the name of the regulation is the *Magistrates (Planning Infringement Notices) Regulation 2023*.

### **Clause 2 Commencement**

This clause provides that the regulation commences on the commencement of the *Planning Act 2023*, section 3.

### **Clause 3 Dictionary**

This clause provides that the dictionary at the end of the regulation is part of the regulation. It contains terms used in the regulation and these terms apply to the entire regulation unless a provision provides otherwise.

### **Clause 4 Notes**

This clause provides that a note contain in the regulation is not part of the regulation. It is intended to be explanatory in nature.

### **Clause 5 Purpose of this regulation**

This clause sets out that its purpose is to provide for infringement notices under the Magistrates Court Act 1930, part 3.8 for certain offences against the *Planning Act 2023*.

## **Clause 6 Administering authority**

This clause provides for the territory planning authority to be the administering authority in relation to the issue of infringement notices under this regulation.

This clause also provides for the term **territory planning authority** used in this clause to have the same meaning as in the *Planning Act 2023*.

## **Clause 7 Infringement notice offences**

This clause provides for the Magistrates Court Act 1930, part 3.9 applies to an offence against a provision of the *Planning Act 2023* mentioned in the regulation at schedule 1, column 2.

## **Clause 8 Infringement notice penalties**

This clause provides for the penalties for an offence under a relevant infringement notice for an individual is prescribed in schedule 1, column 4, of the regulation and that the respective penalty for a corporation in that circumstances is 5 times the amount prescribed in column 4.

## **Clause 9 Contents of infringement notice—identifying authorised person**

This clause provides for the infringement notice must fully identify the authorised person. Such identification could be by stating the authorised person's full name or the person's surname and initials, or by stating a unique number given, for the regulation, to the authorised person by the administering authority.

## **Clause 10 Contents of infringement notices—other information**

This clause provides for additional information, other than the offence and penalty, which must be provided in a relevant infringement notice. The additional information is as follows:

- for an infringement notice served on a company – the company's A.C.N.

This requirement is additional to the requirement under the *Magistrates Court Act 1930*, s 121(1)(c).

This clause also provides for the term **company** and **A.C.N.** used in this clause to have the same meaning as in the *Corporations Act 2002* (Commonwealth).

## **Clause 11 Contents of reminder notices – identifying authorised person**

This clause provides for a reminder notice must fully identify the authorised person. Such identification could be by stating the authorised person's full name or the person's surname and initials, or by stating a unique number given, for the regulation, to the authorised person by the administering authority.

## **Clause 12 Authorised people for infringement notice offences**

This clause prescribes that an inspector may serve a relevant infringement notice and a relevant reminder notice under the regulation.

## **Schedule 1 Planning Act 2023 infringement notice offences and penalties**

This schedule prescribes the relevant offences under the *Planning Act 2023*, and respective infringement notice penalties under the regulation. Schedule 1, column 2, prescribes the reference to the offence provision of the relevant law.

The infringement notice penalty amounts prescribed in schedule 1, column 4, are broadly consistent with the Guide to Framing Offences. They are intended to cover relatively serious regulatory offending for the purposes of financial gain.

### **Dictionary**

This clause defines terms referred to in clause 3.