

Australian Capital Territory

# Magistrates Court (Building Infringement Notices) Amendment Regulation 2024 (No 1)

Subordinate law SL2024–2

made under the

**Magistrates Court Act 1930**

## REVISED EXPLANATORY STATEMENT

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This revised explanatory statement relates to the *Magistrates Court (Building Infringement Notices) Amendment Regulation 2024 (No 1)* (the regulation) as made by the Executive.

It has been prepared to address comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its Scrutiny Report 41.

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

The regulation is being made in accordance with part 3.8 of the *Magistrates Court Act 1930* and will enable infringement notices to be issued for certain offences against the *Building Act 2004* (the Building Act).

There are currently only a small number of infringement notices for the Building Act set out in the *Magistrates Court (Building Infringement Notices) Regulation 2008*. This regulation includes a range of additional strict liability offences under the Building Act as also offences for which a infringement notice penalty can be issued:

- Doing building work beyond a certain stage (sections 43(3), 44(2A) and 44(2B), maximum penalty: 50 penalty units)

- Carrying out building work in contravention of section 42 (section 51(1), maximum penalty: 50 penalty units)
- Compliance with notices under part 4 (section 64(1) and 64(2), maximum penalty: 50 penalty units)
- Occupation and use of ex-government buildings (section 78(2), maximum penalty: 50 penalty units)
- Action by registrar on unauthorised use of a building (section 79(5), maximum penalty: 50 penalty units)

A regulatory impact statement is not required for this regulation as it is amending an existing regulation, not imposing new regulation on the community.

## **SCRUTINY OF BILLS COMMITTEE PRINCIPLES**

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its Scrutiny Report 41 noted that the explanatory statement for the Amendment Regulation did not identify any human rights engaged by a subordinate law, and justify any derogation of those rights. The Committee further noted that the explanatory statement did not meet the technical or stylistic standards expected by the Committee.

Infringement notice schemes arguably engage section 22 of the *Human Rights Act 2004* and engage the Scrutiny Committee terms of reference by introducing liabilities.

This revised Explanatory Statement addresses these engagements through the inclusion of the following human rights assessment.

## **CONSISTENCY WITH HUMAN RIGHTS**

During the development of this amendment regulation due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (the Human Rights Act).

An assessment of the Bill against section 28 of the Human Rights Act is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

### **Rights Limited**

#### Rights in criminal proceedings

Section 22 (1) of the Human Rights Act provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

### *Nature of the right and the limitation (s28(a) and (c))*

This amendment regulation introduces new infringement notices for existing strict liability offences under the Building Act, to support the effective operation of the Act. This regulation does not create new strict liability offences.

Strict liability offences engage section 22 (1) of the Human Rights Act as there is no requirement to establish a fault element, such as intention, recklessness, or negligence and the prosecution need only show that the defendant did the prohibited act.

### *Legitimate purpose (s28 (b))*

The infringement notice scheme created by this amendment regulation provides an additional compliance mechanism which allows the Construction Occupations Registrar to issue an infringement notice to a person who has committed certain strict liability offence(s) under the Building Act. This supports the objective of the Building Act, which is to regulate buildings and building work.

### *Rational connection between the limitation and the purpose (s28 (d))*

Appropriate regulatory actions are essential to building community in the ACT's building and construction industry and industry confidence in the regulatory oversight undertaken by Government. There is a high expectation that the building and construction sector will comply with the requirements of the Building Act, and it is important that those requirements are enforced through appropriate penalties to protect the community. Infringement notices are just one enforcement action that the Construction Occupations Registrar can take in relation to breaches of the Building Act. Other actions including the taking of disciplinary action against a construction occupation licensee under the *Construction Occupations (Licensing) Act 2004*.

### *Proportionality (s28 (e))*

Infringement notices are an important component of an effective regulatory framework by providing a deterrent to non-compliance and an alternative to prosecution. Effective infringement notice schemes minimise the cost of litigation for the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

Under the *Magistrates Court Act 1930* a person authorised to issue an infringement notice for an offence has discretion to decide whether to issue the notice. Also, a person issued with an infringement notice has the option to pay the notice, seek an extension of time to pay, enter into an infringement notice management plan, apply to have the infringement notice waived or withdrawn or dispute the notice.

It should be noted that paying an infringement notice is not an acceptance of guilt. If a person declines to pay an infringement notice, the Construction

Occupations Registrar has the discretion to either proceed with a prosecution or cease action.

Any breaches of the offence framework will be managed through an ‘engage, educate and enforce’ compliance process. This provides a safeguard to ensure the limitation on any rights is reasonable and proportionate. Should a breach occur, conduct that contravenes the legislative framework will be considered on a case-by-case basis and within its own context.

The Construction Occupations Registrar sits within Access Canberra and applies the Access Canberra Accountability Commitment and takes a risk-based approach to taking regulatory action. The Access Canberra Accountability Framework includes the [Building and construction services compliance framework](#) which is publicly available.

The strict liability offences in the Building Act are framed with clear criteria as to whether the offence has occurred. The clear framing of offences, as well as strong communication around the obligations of builders, are important safeguards on individual rights and ensure the proportionality of introducing infringement notice penalties. In addition, industry is already aware of the obligations and offences set out in the Act as they are existing offences.

## **SUMMARY OF CLAUSES**

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

This clause provides that the name of the regulation is the *Magistrates Court (Building Infringement Notices) Amendment Regulation 2024 (No 1)*.

### **Clause 2 Commencement**

This clause provides for the commencement of the regulation on 1 March 2024.

### **Clause 3 Legislation amended**

This clause provides that the regulation amends the *Magistrates Court (Building Infringement Notices) Regulation 2008*.

### **Clause 4 Schedule 1, part 1.1**

This clause provides the schedule of offence provisions, offence penalties (penalty units) and infringement penalties, for offences under the *Building Act 2004*.