

Magistrates Court (Biosecurity Infringement Notices) Regulation 2025

Subordinate law SL2025–5

made under the

Biosecurity Act 2023, section 234 (regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the **Magistrates Court (Biosecurity Infringement Notices) Regulation 2025** (regulation) as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

The 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 to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The regulation **is not** a Significant Regulation. Significant Regulations are regulations that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE REGULATION

The *Biosecurity Act 2023* (Biosecurity Act) repeals the *Animal Diseases Act 2005*, *Plant Diseases Act 2002*, and *Pest Plants and Animals Act 2005*, and provides a unified and updated legislative framework for the ACT's biosecurity system, consistent with the Territory's national obligations and operational requirements.

The regulation enables authorised persons under section 168 of the Biosecurity Act to serve infringement notices and infringement reminder notices. Part 3.8 of the *Magistrates Court Act 1930* (Magistrates Court Act) provides for the serving of infringement notices for offences listed in regulation. 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 serve a notice, and will be guided by the compliance policy in place at that time.

Infringement notices are intended to provide an alternative to prosecution. The ability to issue infringement notices for offences against the Biosecurity Act will encourage compliance with the legislation and will allow for immediate action to be taken against people who are breaching the law.

CONSULTATION ON THE PROPOSED APPROACH

Public and stakeholder consultation on the requirements for the ACT's biosecurity legislation, including its subordinate laws, was undertaken at the time of developing the Biosecurity Act which was passed in November 2023.

Consultation with the Parliamentary Counsel's Office, and Legislation, Policy and Programs (ACT Government Justice and Community Safety Directorate) informed the development of civil and criminal offence provisions, to ensure consistency with the ACT's civil and criminal law frameworks and guiding principles, and the requirements of the *Human Rights Act 2004*. Economic and Regulatory Policy (ACT Government Treasury) was consulted for advice on the requirements for a regulatory impact statement. Policy and Cabinet Division (ACT Government Chief Minister, Treasury and Economic Development Directorate) was consulted on the broader policy implications of the regulation.

REGULATORY IMPACT

A regulatory impact statement is not required as this regulation relates to the issuing of infringement notices under the Magistrates Court Act and does not impose any new obligations).

CLIMATE IMPACT

There are no climate impacts associated with this regulation.

CONSISTENCY WITH HUMAN RIGHTS

This regulation contains strict liability offences, as such, it might be seen to engage the presumption of innocence. 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. In a strict liability offence, 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. Strict liability offences arise in a regulatory context where for reasons such as environmental 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.

While an infringement notice scheme offers the opportunity for a person to pay the infringement notice rather than face prosecution, it does not prevent them from choosing to challenge the notice and instead face prosecution in court, so the minimum guarantees in criminal proceedings under section 22(2) and rights to a fair trial under section 21 of the *Human Rights Act* remain available and are not undermined by the possibility of an infringement notice scheme.

A less restrictive approach (namely, not creating infringement notices for these offences) would still enable enforcement but would not be as effective as a deterrent and would only be feasible to enforce for larger-scale breaches. Given the educative approach to biosecurity risk management changes, the effectiveness of deterrence is critical to generate wide-scale behavioural change. A less restrictive approach would not achieve this and would thus not induce the changes to practices that are needed to maintain the ACT's level of biosecurity in response to current and emerging risks and threats.

The use of strict liability offences directly supports the effective enforcement of the Biosecurity Act and its subordinate laws, which will create a deterrent for businesses to breach the law regarding prohibited and notifiable biosecurity matter. This infringement notice scheme is proportionate because it is a reasonable and qualified limitation of the right and is targeted to its legitimate purpose of supporting enforcement to achieve the biosecurity objectives of the Act.

This regulation does not create any new offences. This regulation introduces infringement notices for the following strict liability offences in the Biosecurity Act, *Biosecurity (National Livestock Identification System) Regulation 2025* (Biosecurity (NLIS) Regulation)), and *Biosecurity Regulation 2025* (Biosecurity Regulation), and includes strict liability offences carried over from the repealed biosecurity Acts:

SUMMARY OF CLAUSES

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Magistrates Court (Biosecurity Infringement Notices) Regulation 2025*.

Clause 2 Commencement

This regulation commences on the commencement of the *Biosecurity Act 2023* (the Biosecurity Act), section 3.

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.

Clause 4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Clause 5 Purpose of regulation

This clause provides that the purpose of the regulation is to provide for infringement notices under the *Magistrates Court Act*, part 3.8, for certain offences against the Biosecurity legislation (which includes the Biosecurity Act, *Biosecurity Regulation 2025* (Biosecurity Regulation), *Biosecurity (National Livestock Identification System) Regulation 2025* (Biosecurity (NLIS) Regulation)).

Clause 6 Administering authority

This clause provides that the administering authority for an infringement notice offence under the regulation is the director-general of the Biosecurity Act, which is the director-general of the Environment, Planning and Sustainable Development Directorate.

Clause 7 Infringement notice offences

This clause provides that the Magistrates Court Act, part 3.8 (“Infringement notices for certain offences”), applies to an offence against a provision of the Biosecurity legislation (which includes the Biosecurity Act, Biosecurity Regulation and the Biosecurity (NLIS) Regulation) mentioned in the regulation in schedule 1, column 2.

Clause 8 Declared offences—Act, s 117, definition of vehicle-related offence, par (b)

This clause provides that the Magistrates Court Act, division 3.8.3 (“Additional provisions for vehicle-related offences”) applies to an offence against a provision of the biosecurity legislation as set out in Schedule 2, column 2 of this regulation.

Division 3.8.3 of the *Magistrates Court Act 1930* provides additional powers for issuing an infringement notice for an offence listed as a vehicle related offence. A vehicle related offence is defined as an infringement notice offence that –

- (a) involves a vehicle; and
- (b) is declared by regulation to be an offence to which division 3.8.3 (of the *Magistrates Court Act 1930*) applies.

A vehicle related offence must be a strict liability offence and will have the same infringement notice attached to the offence as when it is not a vehicle related offence.

This section gives effect to improved enforceability at biosecurity events by facilitating the issuing of an infringement notice to the registered operator of a motor

vehicle from which an offence is committed. It defines an offence classified as a vehicle related offence for the purpose of issuing infringement notices, using registration details from a number plate to identify the responsible person and issue an infringement notice.

Clause 9 Infringement notice penalties

This clause provides that the penalties for the offences against the Biosecurity legislation (which includes the Biosecurity Act, Biosecurity Regulation, Biosecurity (NLIS) Regulation), are listed in schedule 1, column 4. This clause provides that penalties payable for an offence by a corporation are five times the amount applicable to individuals in column 4 of Schedule 1.

Clause 10 Contents of infringement notices—identifying authorised person

This clause provides for the requirement for an authorised person serving an infringement notice against the biosecurity legislation to include details that enable the authorised person to be identified, and specifies the information requirements.

Clause 11 Contents of infringement notices—other information

This clause provides for the requirement to include the Australian Company Number (ACN) in instances where the authorised person serves an infringement notice against the biosecurity legislation on a company.

Clause 12 Contents of reminder notices—identifying authorised person

This clause provides for the requirement that an authorised person must include information that identifies the authorised person when serving a reminder notice for an infringement notice offence against the biosecurity legislation, and specifies the information requirements.

Clause 13 Authorised people for infringement notice offences

This clause provides for a biosecurity officer appointed under the Biosecurity Act to serve an infringement notice or reminder notice for an infringement notice offence.

Schedule 1 - Biosecurity legislation infringement notice offences and penalties

Part 1.1 of this schedule identifies the offence provisions in the Biosecurity Act under which infringement notices may be served, and the infringement notice penalties that apply.

Part 1.2 of this schedule identifies the offence provisions in the Biosecurity (NLIS) Regulation under which infringement notices may be served, and the infringement notice penalties that apply.

Part 1.3 of this schedule identifies the offence provisions in the Biosecurity Regulation under which infringement notices may be served, and the infringement notice penalties that apply.

Schedule 2 - Biosecurity legislation vehicle-related offences

Schedule 2 lists “Biosecurity Act 2023 vehicle-related offences”, which currently lists section 188(1) of the Biosecurity Act as the sole vehicle-related offence.

Pursuant to clause 8 of the regulation, offences within Schedule 2 are declared to be offences to which Division 3.8.3 of the *Magistrates Court Act* applies. This means, amongst other things, that for Schedule 2 offences, authorised officers are able to use vehicle registration information to identify or contact a person if required when there is no other easier way of obtaining this information. A further explanation of vehicle related offences can be found at clause 8.

While section 188 (1) has been listed in Schedule 2 as a vehicle-related offence, the penalty amount has been created under Schedule 1.

Dictionary

The Dictionary provides definitions for this regulation.