

Magistrates Court (Property Developer Infringement Notices) Regulation 2026

Subordinate law SL2026-16

made under the

Magistrates Court Act 1930, s 119 (Regulations about infringement notice offences)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Magistrates Court (Property Developer Infringement Notices) Regulation 2026* (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

The regulation is being made in accordance with part 3.8 of the *Magistrates Court Act 1930* (the **Magistrates Court Act**) and will enable infringement notices to be issued for certain offences, as an alternative to prosecution. Under section 119 of the Magistrates Court Act, regulations may be made prescribing offences as infringement notice offences.

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 will enable infringement notices to be issued for certain offences against the *Property Developers Act 2024* (the **Property Developers Act**).

The *Property Developers Act* establishes a licensing scheme that ensures certain residential development activities are only undertaken by licensed property developers; imposes standards of practice and competency for the residential development activities undertaken by licensed property developers; requires property developers to rectify serious defects, or possible serious defects in regulated residential buildings they arrange to be constructed; and provides for the monitoring and enforcement of compliance with the *Property Developers Act*.

The ability to issue infringement notices for offences against the *Property Developers Act* will encourage compliance with the legislation and will allow for immediate action to be taken against people who are breaching the law. This regulation does not create any new offences.

The regulation will enable infringement notices to be issued for the following offences in the *Property Developers Act*:

- section 23 (1) – failure of a licensee to notify the registrar about a change of circumstances
- section 61 (3) – failure to comply with a stop work order
- section 93 (3) – making a false or misleading representation that a person authorised under a licence to undertake a residential development activity.

CLIMATE IMPACT

There are no climate change impacts arising from the regulation.

REGULATORY IMPACT STATEMENT

Section 34 of the *Legislation Act 2001* (the *Legislation Act*) provides that if a proposed subordinate law or disallowable instrument (the *proposed law*) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a Regulatory Impact Statement (*RIS*) to be prepared for the proposed law.

Regulatory impact was considered by government as part of the policy approval for the Act, including advice on exemptions. The Act establishes the ACT's property developer licensing and regulation scheme, the requirement for certain property developers to be licensed, and the obligations on these property developers, such as payment of licence fees.

This regulation does not impose an additional regulatory burden on people that the Act applies to. As such, a RIS is not required to support this regulation.

CONSISTENCY WITH HUMAN RIGHTS

This regulation contains strict liability offences, and as such, limits section 22(1) of the *Human Rights Act 2004* (the ***Human Rights Act***) which 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 are appropriate in a regulatory context where there is a public interest in ensuring that regulatory schemes are observed and an expectation that a defendant can reasonably be expected to know what the requirements of the law are.

As noted above, the strict liability offences will apply to the following offences in the *Property Developers Act*:

- section 23 (1) – failure of a licensee to notify the registrar about a change of circumstances
- section 61 (3) – failure to comply with a stop work order
- section 93 (3) – making a false or misleading representation that a person authorised under a licence to undertake a residential development activity.

One of the objectives of the *Property Developers Act* is to protect the community and strengthen public confidence in building quality by ensuring that regulated residential building activity is undertaken by licensed, compliant persons and entities, and that orders for corrective action are complied with in a reasonable timeframe. As described in the human rights assessment for the *Property Developers Act* (where section 22 (1) of the *Human Rights Act* was limited), the use of infringement notice penalties supports an effective regulatory scheme by providing appropriate disincentives to undertaking the actions subject to the offence provisions. This is important in deterring non-compliance and is intended to provide enhanced consumer protection outcomes for persons interacting with the property development industry.

The Construction Occupations Registrar maintains oversight of all infringement notices, ensuring alignment with Access Canberra’s commitments to accountability, governance, and transparency, and facilitating their consideration and determination by the appropriate executive regulatory committee.

The offences prescribed under this regulation apply to licenced property developers and persons engaged in regulated building activity. To the extent that any provision limits an individual’s human rights, the limitation is considered reasonable and demonstrably justified in accordance with section 28 of the Human Rights Act.

SCRUTINY COMMITTEE PRINCIPLES

The regulation has been developed in accordance with the Scrutiny Committee’s terms of reference, principles and technical and stylistic standards expected by the Assembly.

CLAUSE NOTES

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Magistrates Court (Property Developers Infringement Notices) Regulation 2026*.

Clause 2 Commencement

This clause provides that the regulation commences on 1 October 2026.

Clause 3 Notes

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

Clause 4 Purpose of regulation

This clause sets out that the purpose of the regulation is to provide for infringement notices under the *Magistrates Court Act 1930*, part 3.8 for certain offences against the *Property Developers Act 2024*.

Clause 5 Administering authority

This clause provides that the construction occupations registrar is the administering authority in relation to the issue of infringement notices under this regulation.

Clause 6 Infringement notice offences

This clause provides for the *Magistrates Court Act 1930*, part 3.8 applies to an offence against a provision of the *Property Developers Act 2024* mentioned in the regulation at schedule 1, column 2.

Clause 7 Infringement notice penalties

This clause provides that 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 circumstance is 5 times the amount prescribed in column 4. The cost of serving a reminder notice for an infringement notice is \$34.

Clause 8 Contents of infringement notice—identifying authorised person

This clause provides that the infringement notice must fully identify the authorised person. Such identification by either 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 9 Contents of infringement notices—other information

This clause specifies that infringement notices served on a company must include the company's Australian Company Number (ACN).

Clause 10 Contents of reminder notices—identifying authorised person

This clause provides that a reminder notice must fully identify the authorised person. Such identification either 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 11 Authorised people for infringement notice offences

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

Schedule 1 Property Developers Act 2024 infringement notice offences and penalties

This schedule prescribes the relevant offence provisions under the *Property Developers Act 2024*, and respective infringement notice penalties under the regulation. Schedule 1, column 2, provides 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 for Framing Offences. They are intended to cover relatively serious regulatory offending.