

2008

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**MAGISTRATES COURT (PLANNING AND DEVELOPMENT
INFRINGEMENT NOTICES) REGULATION 2008**

SUBORDINATE LAW SL2008-11

EXPLANATORY STATEMENT

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OVERVIEW

Part 3.8 of the *Magistrates Court Act 1930* provides that offences prescribed under a regulation made under that Act can be dealt with by way of an infringement notice. The *Magistrates Court (Planning and Development Infringement Notices) Regulation 2008* is to be made under that Act and will enable infringement notices to be issued for a number of offences under the *Planning and Development Act 2007*.

Under the *Magistrates Court Act 1930* a person authorised to issue an infringement notice for an offence has discretion to decide if 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 moves, alters, damages, defaces, covers or prevents access to a sign while under the *Planning and Development Act 2007* the sign is required to be displayed to notify proposed development;
- a person undertakes development without development approval under the *Planning and Development Act 2007* and under that Act the development requires development approval;
- a person undertakes development, and the development is prohibited by the *Planning and Development Act 2007*;
- a person undertakes development, for which the person has a conditional development approval under the *Planning and Development Act 2007*, and the person does not comply with a condition of the development approval when undertaking the development;
- the planning and land 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 and Development Act 2007* the planning and land authority directs a person to carry out rectification work in relation to a controlled activity, and the person contravenes the direction;
- under the *Planning and Development Act 2007* the planning and land 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 and Development Act 2007* an inspector lawfully requires a person to state the person's name and home address and the person fails to comply with the requirement;

SUMMARY OF CLAUSES

Clause 1—Name of Regulation—provides that the Regulation is called—*Magistrates Court (Planning and Development Infringement Notices) Regulation 2008*.

Clause 2—Commencement—provides that the regulation commences upon the commencement of the *Planning and Development Act 2007*, section 428 (Repeals), and provides in a note that the naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

It is necessary to delay commencement of the regulation until the commencement of the above-mentioned section 148, as that section has the effect of repealing laws that the *Planning and Development Act 2007* will make redundant, repeal and replace.

Clause 3—Purpose of Regulation—provides that the purpose of the regulation is to allow for infringement notices under the *Magistrates Court Act 1930*, part 3.8 for certain offences against the *Planning and Development Act 2007*. See the *Magistrates Court Act 1930*, part 3.8, for how it provides a system of infringement notices for offences against various Acts. The infringement notice system is intended to provide an alternative to prosecution.

Section 4—Dictionary—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 the Legislation Act, s 155 and s 156 (1)).

Clause 5—Notes—provides that a note included in the regulation is, in law, not part of the regulation; it is purely explanatory.

Clause 6—Administering authority—provides that the *planning and land authority* is the administering authority in relation to the issue of infringement notices under the regulation. Under the *Legislation Act 2001*, dictionary, part 1, that term is defined as follows—

planning and land authority means the Planning and Land Authority established under the *Planning and Land Act 2002*.

However, an uncommenced amendment in the *Planning and Development (Consequential Amendments) Act 2007*, schedule 1, amendment 1.98, proposes to amend that definition as follows—

[1.98] Dictionary, part 1, definition of *planning and land authority*
substitute

planning and land authority means the Planning and Land Authority established under the *Planning and Development Act 2007*.

It is intended that that amendment commence on or before the commencement of the regulation, and that amended definition will define the relevant term for the purposes of clause 6 of the regulation.

Clause 7—Infringement notice offences—provides that The *Magistrates Court Act 1930*, part 3.8 applies to an offence against a provision of the *Planning and Development Act 2007* mentioned in the regulation at schedule 1, column 2.

Clause 8—Infringement notice penalties—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. For example if schedule 1, column 4, prescribes an amount of \$1200, the amount payable by an individual under the notice is \$1200 and the amount payable by a corporation is 5 x \$1200 = \$6000.

The section also prescribes that the cost of service a relevant reminder notice under the *Magistrates Court Act 1930*, for a relevant infringement notice offence is \$34. That is the amount payable by the person to whom the reminder notice is issued.

Clause 9—Contents of infringement notices—other information—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 ACN.

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

The clause also provides that for the clause the term *company* means a company registered under the *Corporations Act 2001* (Commonwealth).

It is intended that the term *ACN* means, for a company registered under the *Corporations Act 2001* (Commonwealth),—the Australian company number assigned to the company under that Act.

Clause 10—Contents of infringement notices—identifying authorised person—provides that 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 11—Contents of reminder notices—identifying authorised person—provides that 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—prescribes that an *inspector* may serve a relevant infringement notice and a relevant reminder notice under the regulation. The term PLANNING AND DEVELOPMENT ACT 2007.

Schedule 1—prescribes the relevant offences under PLANNING AND DEVELOPMENT ACT 2007, and respective infringement notice penalties under the regulation. Schedule 1, column 2, prescribes the reference to the offence provision of the relevant law. For example, schedule 1, part 1.1 (Planning and Development Act 2007), item 1, column 2, prescribes offence provision “155 (2)”, which is a reference to the offence provision at subsection 155 (2) of the *Planning and Development Act 2004*.

The infringement notice penalty amounts prescribed in the regulation schedule 1, column 4, are intended to represent 20% of the respective maximum penalty provided for the offence, which reflects general legal policy in the absence of compelling reasons to depart from that magnitude of penalty.