

2009

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

**MAGISTRATES COURT (WORK SAFETY INFRINGEMENT NOTICES)
REGULATION 2009**

SUBORDINATE LAW SL2009-47

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 (Work Safety Infringement Notices) Regulation 2009* will be made under that Act and will enable infringement notices to be issued for prescribed offences under the *Work Safety Act 2008*, and, for prescribed offences under the Work Safety Regulation 2009.

The *Work Safety Act 2008* repeals the *Occupational Health and Safety Act 1989* and the associated regulations made under it including the Occupational Health and Safety (General) Regulation 2007, and the Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000. This regulation remakes many of the infringement notices that were in existence under the previous Act and regulations.

The infringement notice system is intended to provide an alternative to prosecution where it is deemed that an infringement notice imposing a monetary fine will be sufficient rather than taking the matter before the courts. 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 a notice. Public servants appointed as inspectors under the *Work Safety Act 2008* are authorised to issue infringement notices.

SUMMARY OF CLAUSES

Section 1—Name of regulation—provides that the regulation is called the *Magistrates Court (Work Safety Infringement Notices) Regulation 2009*.

Section 2—Commencement—provides that the regulation commences upon the commencement of the *Work Safety Act 2008*.

Section 3—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 Legislation Act, s 155 and s 156 (1)).

Section 4—Notes—provides that a note included in the regulation is, in law, not part of the regulation: it is purely explanatory. See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Section 5—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 *work safety legislation*. *Work safety legislation* is defined in the dictionary to mean the *Work Safety Act 2008* and the Work Safety Regulation 2009.

Section 6—Administering authority—provides that the *chief executive* as per the ACT's Administrative Arrangements under the *Work Safety Act 2008* is the

administering authority in relation to the issuing of an infringement notice under the regulation.

Section 7—Infringement notice offences—provides that The *Magistrates Court Act 1930*, part 3.8 applies to an offence against a provision of the *work safety legislation* mentioned in the regulation at schedule 1, column 2.

Section 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 \$1000 the amount payable by an individual under the notice is \$1000 and the amount payable by a corporation is (5 x \$1000) \$5000.

The section also prescribes that the cost of service of 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.

Section 9—Contents of infringement notices—other information—provides that an infringement notice served on a company must include the company's ACN. In this section *company* means a company registered under the *Corporations Act 2001*.

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

Section 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, the person's surname and initials, or, by stating a unique number given, for the regulation, to the authorised person by the administering authority.

Section 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, the person's surname and initials, or, by stating a unique number given, for the regulation, to the authorised person by the administering authority.

Section 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. An *inspector* is defined in the *Work Safety Act 2008* dictionary under section 180 of that Act and is a public servant appointed by the chief executive as an inspector for the Act.

Schedule 1— This schedule lists the infringement notice offences and penalties under clauses 7 and 8 of this Regulation.

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 for an individual.

Part 1.1 of schedule 1 lists the infringement notice offences under the *Work Safety Act 2008*. Part 1.2 lists the infringement notice offences under the Work Safety Regulation 2009. For further details on each listed provision refer to the respective explanatory statements as notified.