

THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (TOBACCO INFRINGEMENT NOTICES) REGULATION 2010

SL2010-49

EXPLANATORY STATEMENT

Circulated by the authority of
Simon Corbell MLA
Attorney General

Magistrates Court (Tobacco Infringement Notices) Regulation 2010

Outline

Part 3.8 of the *Magistrates Court Act 1930* provides that offences prescribed by a regulation made under the Magistrates Court Act can be dealt with by way of an infringement notice. The *Magistrates Court (Tobacco Infringement Notices) Regulation 2010* is being made under Part 3.8 of the Magistrates Court Act and will enable infringement notices to be issued for offences of the *Tobacco Act 1927*.

Infringement notices are intended to provide an alternative to prosecution. 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 issue a notice. The persons authorised to issue infringement notices are public servants appointed as inspectors under the Act. Infringement notices may be issued to individuals and businesses for offences related to the sale and supply of tobacco and tobacco-related products.

Summary of Clauses

Clause 1 – Name of Regulation

This clause declares the name of the regulation, Magistrates Court (Tobacco Infringement Notices) Regulation 2010.

Clause 2 – Commencement

This clause provides that the regulation commences the day after it is notified by the Parliamentary Counsel on the Legislation Register.

Clause 3 – Dictionary

This clause provides that the dictionary at the end of the Regulation forms part of the Regulation.

Clause 4 – Notes

This clause provides that a note included in the Regulation is explanatory and is not part of the 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 1930*, part 3.8, for certain offences against the Tobacco Act.

Clause 6 – Administering authority

This clause provides that the administering authority for an infringement notice offence is the chief executive. Section 163 (2)(a) of the *Legislation Act 2001* defines a provision of an Act or statutory instrument, with a reference to the chief executive without identifying the chief executive's title is a reference to the chief executive of the administrative unit responsible for the provision.

The relevant chief executive is the chief executive of the Department of Justice and Community Safety, who is responsible for the Magistrates Courts Act. Also, under the Administrative Arrangements 2010 the enforcement of the Tobacco Act is the responsibility of the Office of Regulatory Services within the Department of Justice and Community Safety.

Clause 7 – Infringement notice offences

This clause states that infringement notices can be issued for the offences listed in the Regulation at schedule 1, column 2. The offences included in the schedule are all strict liability offences with maximum penalties in the Act up to 50 penalty units.

Clause 8 – Infringement notice penalties

The clause provides for the penalty that is payable by an individual and a corporation served with an infringement notices. The penalty for individuals for each infringement notices is set in column 4 of schedule 1. The respective penalty for a corporation in the same circumstance is five times the amount prescribed in column 4 for an individual.

This clause also provides that the cost of serving a reminder notice for an infringement offence is \$34.

Clause 9 – Contents of infringement notices – identifying authorised person

This clause provides for the contents of infringement notices. An infringement notice must identify the authorised person who served the notice. In the case of a police officer, the infringement notice must identify the police officer's service number. For an authorised person, the person must be identified in the notice by their full name, or their surname and initials, and the unique number given to them by the administering authority for the Regulation. Section 134A of the Magistrates Court Act provides that an administering authority may appoint a person to be an authorised person.

Clause 10 – Contents of infringement notices – other information

This clause 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*. This information is in addition to those requirements set out in section 121 of the Magistrates Court Act.

Clause 11 – Contents of reminder notices – identifying authorised person

This clause provides that a reminder notice for an infringement notice must identify the authorised person who served the notice. In the case of a police officer, the infringement notice must identify the police officer's service number. Otherwise, an authorised person must be identified in the notice by their full name, or their surname and initials, and the unique number given to them by the administering authority for the Regulation. Section 134A of the Magistrates Court Act defines what is an authorised person.

Clause 12 – Authorised people for infringement notice offences

The clause prescribes that an authorised officer under the Tobacco Act is an authorised person for this regulation. Section 134A(2) of the Magistrates Court Act provides that a regulation may prescribe a person to be an authorised person for the serving of an infringement notice and reminder notices. An authorised officer is appointed under section 32 of the Tobacco Act.

Schedule 1

The schedule lists the infringement notice offences and penalties under the Tobacco Act as prescribed by section 7 and 8 of the Regulation.

The infringement notice penalty amounts in schedule 1, column 4 represent 20 percent of the maximum penalty provided for that offence for an individual, except in the case of offences where the maximum penalty is \$5500. In such cases the infringement notice penalty is less than 20 percent at \$1000.