

THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (SMOKE-FREE PUBLIC PLACES INFRINGEMENT NOTICES)  
REGULATION 2010

SL2010-50

EXPLANATORY STATEMENT

Circulated by the authority of  
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## **Magistrates Court (Smoke-Free Public Places 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 (Smoke-Free Public Places Infringement Notices) Regulation 2010* is being made under the Act and will enable infringement notices to be issued for prescribed offences under the *Smoke-Free Public Places Act 2003*.

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 smoking in smoke-free public places.

### **Summary of Clauses**

#### **Clause 1 – Name of Regulation**

This clause declares the name of the regulation is the Magistrates Court (Smoke-Free Public Places Infringement Notices) Regulation 2010.

#### **Clause 2 – Commencement**

This clause provides that the regulation commences on 9 December 2010, which is the day the *Smoking (Prohibition in Enclosed Public Places) Amendment Act 2009* commences, or on the day after its commencement day.

#### **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 *Smoke-Free Public Places 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 *Smoke-Free Public Places 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 up to 50 penalty units in the Act.

### **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 inspector under the Smoke-Free Public Places 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 inspector is appointed under section 10 of the Smoke-Free Public Places Act.

## **Schedule 1**

The schedule lists the infringement notice offences and penalties under the Smoke-Free Public Places Act as prescribed by section 7 and 8 of this 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.