

THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (SMOKING IN CARS WITH CHILDREN INFRINGEMENT  
NOTICES) REGULATION 2012

**SL2012-17**

EXPLANATORY STATEMENT

Circulated by the authority of  
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**Attorney-General**

## **Magistrates Court (Smoking in Cars with Children Infringement Notices) Regulation 2012**

### **Outline**

The *Smoking in Cars with Children (Prohibition) Act 2011* imposes a ban on smoking in vehicles when a child is present, which will be enforced by ACT Policing. For the purposes of the Act a child is a person less than 16 years of age.

Part 3.8 of the *Magistrates Court Act 1930* (Magistrates Court Act) 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 (Smoking in Cars with Children Infringement Notices) Regulation 2012* is being made under the Magistrates Court Act and will enable infringement notices to be issued for prescribed offences under the *Smoking in Cars with Children (Prohibition) Act 2011*.

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 people authorised to issue infringement notices are police officers. Infringement notices may be issued to individuals for offences related to the *Smoking in Cars with Children (Prohibition) Act 2011*.

The offences in the *Smoking in Cars with Children (Prohibition) Act 2011* to which this regulation applies are strict liability offences. For a discussion on the application of strict liability please refer to the explanatory statement to the *Smoking in Cars with Children (Prohibition) Bill 2011*.

### **Summary of Clauses**

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

This clause declares the name of the regulation is the *Magistrates Court (Smoking in Cars with Children Infringement Notices) Regulation 2012*.

#### **Clause 2 – Commencement**

This clause provides that the regulation commences on 1 May 2012. This date is the day the *Smoking in Cars with Children (Prohibition) Act 2011* will commence (in accordance with the provisions for default commencement).

#### **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, part 3.8, for certain offences against the *Smoking in Cars with Children (Prohibition) Act 2011*.

### **Clause 6 – Administering authority**

This clause provides that the administering authority for an infringement notice offence is the director-general of the ACT Health Directorate.

### **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 4. The offences included in the schedule are 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 served with an infringement notice. The penalty for individuals for each infringement notices is set in column 4 of schedule 1.

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.

### **Clause 10 – 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. Section 134A of the Magistrates Court Act defines an authorised person.

### **Clause 11 – Authorised people for infringement notice offences**

The clause prescribes that a police officer under the *Smoking in Cars with Children (Prohibition) Act 2011* 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. Police officers also have authority under section 8 of the *Smoking in Cars with Children (Prohibition) Act 2011*.

### **Schedule 1**

The schedule lists the infringement notice offences and the penalties for the offences. The penalties are set for a notice served on an individual.

The fine for an offence of smoking in a car when children are present is \$250. The amount has been set to provide for consistency with the fine that may be issued in NSW for a similar offence.

A fine has also been set for the offence for section 8, which is for failing to comply with a requirement made by a police officer. The amount for this offence is \$120.

These penalty values have been set so that the nominal amount on an infringement notice is between 4 and 5% of the maximum fine stipulated in the offence.