

2013

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**MAGISTRATES COURT (WORK HEALTH AND SAFETY INFRINGEMENT
NOTICES) AMENDMENT REGULATION 2013 (No 1)**

SUBORDINATE LAW SL2013-12

EXPLANATORY STATEMENT

**Presented by
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Attorney-General**

Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2013 (No 1)

Overview

In September 2012, the Government commissioned an inquiry into compliance with and application of Work Health and Safety laws in the ACT's construction industry. This report titled *Getting Home Safely - Inquiry into Compliance with Work Health and Safety Requirements in the ACT's Construction Industry* was finalised in late 2012, and made 28 recommendations to the Government on ways of improving on improving the ACT's construction industry.

On 26 February 2013 the Minister for Workplace Safety and Industrial Relations advised, in a statement to the Legislative Assembly, that the Government agreed to all 28 recommendations in the report.

Recommendation 20 related to the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*, and recommended that:

'The ACT Government should increase the number of work health and safety matters for which Infringement Notices can be issued on both employees and employers, including sub-contractors ...'

The *Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2013 (No1)* introduces an additional ten offences from ACT Work Health and Safety legislation (comprised of the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*) into the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*.

The making of the *Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2013 (No 1)* and the increase in the number of offences for which infringement notices can be issued, satisfies the Government's commitment to recommendation 20 of the *Getting Home Safely Report into Construction Safety in the ACT*.

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 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 whether to issue a notice.

This regulation amends schedule 1 of the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* by inserting 10 additional offences for which infringement notices can be issued. The offences are all strict liability, and breaches should be readily apparent without the need for further inquiry, or the need to weigh up competing or contradictory evidence. For further discussion on these offences, please refer to the explanatory statements for the Work Health and Safety Bill 2011 (at: http://www.legislation.act.gov.au/b/db_41937/RelatedMaterials/explanatory_statements.asp) and the Work Health and Safety Regulation 2011 (at: <http://www.legislation.act.gov.au/sl/2011-36/default.asp>).

The offences that are proposed to be dealt with by way of an infringement notice under the regulation are relatively minor in nature, and have infringement notices penalties ranging

from \$432 to \$720 for individuals and \$2160 to \$3600 for corporations. These penalty values have been set so that the nominal amount on an infringement notice is either 12% of the maximum fine stipulated in the offence; or capped at 1.44% for the more serious offences.

Summary of Clauses

Clause 1—Name of regulation – provides that the regulation is called the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2013 (No 1)*.

Clause 2—Commencement – provides that the regulation commences on 1 July 2013.

Clause 3—Legislation amended – provides that this regulation amends the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*.

Clause 4—Schedule 1, part 1.1, new item 1A – amends schedule 1, part 1.1 to insert new item 1A being an infringement offence against section 38(1) of the *Work Health and Safety Act 2011*.

Clause 5—Schedule 1, part 1.2, new items 1A to 1C – amends schedule 1, part 1.2 to insert new items 1A, 1B and 1C being infringement offences against sections 42(1), 44(2) and 44(4) of the *Work Health and Safety Regulation 2011*.

Clause 6—Schedule 1, part 1.2, new items 75A to 75C – amends schedule 1, part 1.2 to insert new items 75A, 75B and 75C being infringement offences against sections 299(1), 300(1) and 300(2) of the *Work Health and Safety Regulation 2011*.

Clause 7—Schedule 1, part 1.2, new item 82A – amends schedule 1, part 1.2 to insert new item 82A being an infringement offence against section 306(3) of the *Work Health and Safety Regulation 2011*.

Clause 8—Schedule 1, part 1.2, new item 83A – amends schedule 1, part 1.2 to insert new item 83A being an infringement offence against section 309(1) of the *Work Health and Safety Regulation 2011*.

Clause 9—Schedule 1, part 1.2, new item 89A - amends schedule 1, part 1.2 to insert new item 89A being an infringement offence against section 317(1) of the *Work Health and Safety Regulation 2011*.