

2015

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**MAGISTRATES COURT (WORK HEALTH AND SAFETY INFRINGEMENT
NOTICES) AMENDMENT REGULATION 2015 (NO 1)**

SL2015-7

EXPLANATORY STATEMENT

**Presented by
Simon Corbell MLA
Attorney-General**

Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2015 (No 1)

Outline

The objects of the *Work Health and Safety Act 2011* (the WHS Act) are to provide a balanced and nationally consistent framework to secure the health and safety of workers and workplaces against harm to their health, safety and welfare.

In conjunction with the WHS Act, the *Work Health and Safety Regulation 2011* (the WHS Regulation) provides for regulatory requirements supporting the WHS Act.

The WHS Regulation, chapter 8 (Asbestos) provides mechanisms for controlling work, health and safety risks relating to work involving asbestos. These mechanisms include the application of a number of offences relating to dealing with asbestos and reporting relevant work.

The *Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2015 (No 1)* ('the Regulation') amends the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* by introducing new infringement notice requirements.

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 court. Under the Magistrates Court Act, 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, part 1.2 of the Magistrates Court (Work Health and Safety Infringement Notices) Regulation by inserting additional offences for which infringement notices can be issued.

Section 466 (1) of the WHS Regulation has been inserted into Item 101.1 (for an individual) and Item 101.2 (for a body corporate). Section 466 (1) requires licensed asbestos removalists to give written notice to the regulator at least five days before the removalist commences licensed asbestos work, including licensed asbestos removal work on a structure, or part of a structure, that contains, or has contained, loose-fill asbestos insulation.

Section 466 (3) of the WHS Regulation has also been inserted into Item 102.1 (for an individual) and Item 102.2 (for a body corporate). Section 466 (3) requires that licensed asbestos removalists must provide immediate notification to the regulator in cases where asbestos must be removed immediately. The licensed removalist must also provide notice, in writing, within 24 hours after initial notice is given by telephone.

Section 6A of the WHS Regulation provides that, unless otherwise specified, the physical elements of an offence are strict liability. For the offences in the Regulation, prosecution is required to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made the conduct innocent, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.

The rationale for these offences is that people who owe work safety duties can be expected to be aware of their duties and obligations to the wider public. The offences are strict liability,

and breaches should be readily apparent without the need for further inquiry, or the need to weigh up competing or contradictory evidence.

Failure to comply with requirements in the Regulation is an offence. As these offences arise in the regulatory context where public safety is paramount, there is an interest in ensuring that regulatory schemes are observed, and in this context the sanction of criminal penalties is justified.

The offences were included in the *Work Health and Safety Regulation 2011* by the Work Health and Safety Amendment Regulation 2014 (No 3) and impose a requirement for a licensed asbestos removalist to give the regulator five days written notice before commencing licensed asbestos removal work on a structure, or part of a structure, that contains, or has contained, loose-fill asbestos insulation.

The penalty values have been set so that the nominal amount on an infringement notice is 12% of the maximum fine stipulated in the offence.

Notes on clauses

Clause 1—Name of regulation

This is a technical clause that explains that the regulation is the *Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2015 (No 1)*.

Clause 2—Commencement

This clause provides that the regulation commences on the day after its notification day.

Clause 3—Legislation amended

This clause provides that this regulation will amend the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*.

Clause 4—Schedule 1, part 1.2, new items 101 and 102

This clause will amend schedule 1, part 1.2 to insert new items 101 and 102 being infringement offences against section 466 of the *Work Health and Safety Regulation 2011*.