

**2015**

**MAGISTRATES COURT (ENVIRONMENT PROTECTION INFRINGEMENT  
NOTICES) AMENDMENT REGULATION 2015 (No 1)**

**SUBORDINATE LAW SL2015-43**

**EXPLANATORY STATEMENT**

**Circulated by authority of  
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Attorney-General**

Australian Capital Territory

# Magistrates Court (Environment Protection Infringement Notices) Amendment Regulation 2015 (No 1)

Subordinate law SL2015–43

made under the

**Magistrates Court Act 1930, s119 (Regulations about infringement notice offences)**

## EXPLANATORY STATEMENT

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### Overview

This explanatory statement relates to the *Magistrates Court (Environment Protection Infringement Notices) Amendment Regulation 2015 (No 1)* as made by the Executive and presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the amending regulation. It does not form part of the amending regulation and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the amending regulation. It is not, and is not meant to be, a comprehensive description of the amending regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision: this is a task for the courts.

Under part 3.8 of the *Magistrates Court Act 1930* regulations can provide for offences to be dealt with by infringement notices, which provide an alternative to prosecution. The *Magistrates Court (Environment Protection Infringement Notice) Regulation 2005* makes infringement notices available for offences under the *Environment Protection Act 1997*.

The *Magistrates Court (Environment Protection Infringement Notices) Amendment Regulation 2015 (No 1)* has been made under the *Magistrates Court Act 1930* to allow infringement notices to be issued for offences against s66B and s66C of the *Environment Protection Regulation 2005*.

The *Environment Protection Amendment Act 2014* amended the *Environment Protection Regulation 2005* inserting ss66B and 66C, which create new offences for failing to install and maintain erosion and sediment control measures on development sites. As a result amendments to the *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005* are required so that infringement notices are available for these offences. This will allow authorised people to issue infringement

notices for these offences. The ability to issue infringement notices will allow compliance measures to be taken without the need to bring a criminal action in court.

Sections 66B and 66C are not strict liability offences. However, they are appropriate for infringement penalties because the offences only apply if someone has an environment protection agreement or building certificate requiring an erosion and sediment control measure. This means that a person who may potentially be served an infringement notice would be fully aware of their obligations. This is consistent with the *Guide for Framing Offences*. The infringement notice penalty is 8.6% of the maximum penalty for the offence. This is less than the “20% rule” as described in the *Guide for Framing Offences*. The infringement notice penalty is set to be consistent with infringement penalties for similar offences.

A Regulatory Impact Statement has not been prepared because the amendment does not impose a regulatory burden. It does not adversely impact rights, or impose more regulation. It merely provides a simpler alternative which is additional to existing compliance measures. A person who has been issued with an infringement notice still has the option of taking the matter to court; however, they also have the option of paying the infringement notice fine, which is procedurally simpler and imposes a lesser penalty.

### **Clause Notes**

#### **Clause 1 – Name of regulation**

This clause names the regulation.

#### **Clause 2 – Commencement**

This clause provides for the commencement of the regulation.

#### **Clause 3 – Legislation amended**

This clause provides that the *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005* is amended.

#### **Clause 4 – Schedule 1, part 1.2, new items 33 and 34**

This clause inserts items 33 and 34 into the schedule of the *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005*. These items stipulate that offences under ss66B and 66C have a maximum penalty of 10 penalty units and an infringement penalty of \$175.