

2016

**MAGISTRATES COURT (HEALTH INFRINGEMENT NOTICES)
REGULATION 2016**

SUBORDINATE LAW SL2016-4

EXPLANATORY STATEMENT

Circulated by authority of
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Magistrates Court (Health Infringement Notices) Regulation 2016

Subordinate law SL2016–4

made under the

Magistrates Court Act 1930, part 3.8 (Infringement notices for certain offences)

EXPLANATORY STATEMENT

Overview

Under part 3.8 of the *Magistrates Court Act 1930*, regulations can provide for offences to be dealt with by infringement notices as an alternative to prosecution. The *Magistrates Court (Health Infringement Notices) Regulation 2016* (Magistrates Court (Health Infringement Notices) Regulation) makes infringement notices available for offences under the *Health Act 1993*.

The Magistrates Court (Health Infringement Notices) Regulation has been made under the *Magistrates Court Act 1930* to allow infringement notices to be issued for offences against s 87(1) and s 87(2) of the Health Act.

The *Health (Patient Privacy) Amendment Act 2015* (the Act) amends the Health Act to create new offences at sections 87(1) and (2) when a person engages in prohibited behaviour in an area declared protected by the Minister.

These offences were introduced in response to community concerns about particular intimidating and harassing conduct occurring outside health facilities approved by the Government to carry out pregnancy terminations. Any limitation on a person's right to freedom of expression arising from these offence provisions are considered reasonable and proportionate to ensure that legal medical services are able to be accessed by all who need them.

The Magistrates Court (Health Infringement Notices) Regulation 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 87(1) and (2) are not strict liability offences, however they are appropriate for infringement penalties because a notice will only be issued after a person is warned that they are breaching the offence provisions, by engaging in prohibited behaviour in a protected area. This is consistent with the *ACT 2010 Guide for Framing Offences* (Guide for Framing Offences).

A person issued with an infringement notice for these offence provisions can dispute liability for the offence and the onus is on the police officer who served the infringement notice and prosecuting agency to proceed with the prosecution through the normal court process.

The infringement notice penalties are 20% of the maximum penalty for the offences. This is consistent with the “20% rule” as described in the Guide for Framing Offences.

Clause notes

Clause 1 Name of regulation

This clause sets out the name of the regulation.

Clause 2 Commencement

This clause provides that the regulation commences either on the date that the new Health Act offence provisions (ss 87(1) and (2)) commence, or the day after the regulation is notified, whichever is the later.

Clause 3 Dictionary

This clause explains that the dictionary is part of the regulation.

Clause 4 Notes

This clause explains that notes are explanatory only and do not form part of the regulation.

Clause 5 Purpose of regulation

This clause explains the purpose of the regulation which is to provide an infringement notice scheme for certain offences under the Health Act.

Clause 6 Administering authority

This clause provides that the administering authority for the infringement notice scheme is the chief police officer.

Clause 7 Infringement notice offences

This clause provides that infringement notices can be issued for offences listed in schedule 1, column 2.

Clause 8 Infringement notice penalties

This clause provides that the penalty payable for an individual for an offence mentioned in schedule 1, column 2, is the amount mentioned in column 4 of schedule 1.

The penalty payable by a corporation for an offence mentioned in schedule 1, column 2, is 5 times the amount mentioned in column 4 of schedule 1.

The clause also provides that the cost for the issue of a reminder notice for an infringement notice offence is \$34.

Clause 9 Contents of infringement notices – identifying authorised person

This clause provides that an infringement notice must identify the authorised person who served the notice by way of the police officer's service number.

Clause 10 Contents of infringement notices – other information

This clause provides that an infringement notice served on a company by an authorised person must include the company's ACN.

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 by way of the police officer's service number.

Clause 12 Authorised people for infringement notice offences

This clause provides that a police officer may serve an infringement notice for an infringement notice offence or a reminder notice for an infringement notice offence against the Health Act.

Schedule 1

This schedule lists the infringement notices offences and penalties for clauses 7 and 8.