

**2019**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**Magistrates Court (Long Service Leave Portable Schemes Infringement Notices) Regulation 2020**

**SL2020-2**

**EXPLANATORY STATEMENT**

**Circulated by the authority of**

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## OVERVIEW

Part 3.8 of the *Magistrates Court Act 1930* provides that offences prescribed by a regulation made under that Act can be dealt with by way of an infringement notice. The Magistrates Court (Long Service Leave Portable Schemes Infringement Notices) Regulation 2019 (the Regulation) will enable infringement notices to be issued for prescribed offences under the *Long Service Leave (Portable Schemes) Act 2009*.

The infringement notice system is intended to provide an alternative to prosecution where it is deemed that an infringement notice imposing a monetary fine would be sufficient rather than taking the matter before the courts. The purpose of this infringement notice scheme is to encourage non-compliant employers to meet their obligations under the *Long Service Leave (Portable Schemes) Act 2009* to register with the Authority. This will ensure their employees have access to long service leave entitlements.

Under the *Magistrates Court Act 1930*, a person authorised to issue an infringement notice for an offence has discretion to decide whether or not to issue a notice. Public servants appointed as inspectors under the *Long Service Leave (Portable Schemes) Act 2009* are authorised to issue infringement notices.

## HUMAN RIGHTS IMPLICATIONS

As it concerns a strict liability offence, the Regulation might be seen to engage the presumption of innocence. In a strict liability offence, there is no requirement to establish a fault element, such as intention, knowledge, recklessness, or negligence.

Strict liability offences arise in a regulatory context where for reasons such as consumer protection and public safety, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. Section 22(1) of the *Human Rights Act 2004* provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

This Regulation does not create any new offences; it facilitates the administration of strict liability offences already contained in the *Long Service Leave (Portable Schemes) Act 2009*. Without the ability to issue infringement notices, the only option available to the Registrar of the Long Service Leave is to apply to ACAT for an order to enforce an obligation under the Act. This is a serious response, and this Regulation provides a method to achieve the policy purpose that is less restrictive on human rights.

## SUMMARY OF CLAUSES

### Clause 1      Name of regulation

This clause provides that the Regulation is the *Magistrates Court (Long Service Leave Portable Schemes Infringement Notices) Regulation 2020*.

### Clause 2      Commencement

This clause provides that the Regulation commences on the day after it is notified.

### **Clause 3 Dictionary**

This is a technical clause providing that the dictionary at the end of the regulation is part of the Regulation. The dictionary defines certain terms used in the Regulation.

A definition in the dictionary applies to the entire Regulation unless the definition, or another provision of the Regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### **Clause 4 Notes**

This is a technical clause providing that a note included in the Regulation is, in law, not part of the Regulation – it is purely explanatory. See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

### **Clause 5 Offences against regulation—application of Criminal Code etc**

This clause makes it clear that the Criminal Code applies to all offences against this Regulation, as does the Legislation Act which deals with penalty units.

### **Clause 6 Purpose of regulation**

The purpose of the Regulation is to provide that certain offences prescribed under the *Long Service Leave (Portable Schemes) Act 2009* can be dealt with by way of an infringement notice.

### **Clause 7 Administering authority**

The administering authority for an infringement notice offence under the regulation is the Registrar of the ACT Long Service Leave Authority.

### **Clause 8 Infringement notice offences**

This clause provides that *the Magistrates Court Act 1930*, part 3.8 applies to an offence against a provision of the *Long Service Leave (Portable Schemes) Act 2009* mentioned in the Regulation at schedule 1, column 2.

### **Clause 9 Infringement notice penalties**

This clause provides that the penalty payable for an offence against the *Long Service Leave (Portable Schemes) Act 2009* under an infringement notice for the offence, is the amount mentioned in schedule 1, column 4 for the offence, or, for a corporation, five times that amount.

The clause also prescribes that the cost of service of a relevant reminder notice under the *Magistrates Court Act 1930*, for a relevant infringement notice offence is \$34. That is the amount payable by the person to whom the reminder notice is issued.

### **Clause 10 Contents of infringement notices—identifying authorised person**

This clause provides that the infringement notice must fully identify the authorised person. Such identification could be by stating the authorised person's full name or the person's surname and initials, or, by stating a unique number given, for the Regulation, to the authorised person by the Registrar of the ACT Long Service Leave Authority.

**Clause 11      Contents of infringement notices—other information**

This clause provides that an infringement notice served on a *company* must include the company's ACN. In this section *company* means a company registered under the Corporations Act.

**Clause 12      Contents of reminder notices—identifying authorised person**

This clause provides that a reminder notice must fully identify the authorised person. Such identification could be by stating the authorised person's full name or the person's surname and initials, or, by stating a unique number given, for the Regulation, to the authorised person by the Registrar of the ACT Long Service Leave Authority.

**Clause 13      Authorised people for infringement notice offences**

This clause prescribes that an inspector appointed under the *Long Service Leave (Portable Schemes) Act 2009* may serve an infringement notice and a relevant reminder notice under the Regulation.

**Schedule 1      Long Service Leave (Portable Schemes) Act 2009 infringement notice offences and penalties**

Schedule 1 outlines the offence penalty and infringement penalty for offences under the *Long Service Leave (Portable Schemes) Act 2009*.

The offences that are being dealt with by way of infringement notices under the regulation are relatively minor in nature and have infringement notice penalties ranging from \$160 to \$640 for individuals and \$810 to \$3,240 for companies.

These penalty values have been set in accordance with ACT Government policy so that the nominal amount on an infringement notice is no greater than 20% of the maximum penalty for the offence.

The offences are all strict liability and breaches should be readily apparent without the need for further inquiry, or the need to consider such fault elements as intention or knowledge or weigh up competing or contradictory evidence.