

Australian Capital Territory

Magistrates Court (Heritage Infringement Notices) Regulation 2020

Subordinate law SL2020–5

made under the

Magistrates Court Act 1930, s 321 (Regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Magistrates Court (Heritage Infringement Notices) Regulation 2020* as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the regulation.

This explanatory statement must be read in conjunction with the regulation. It is not, and not intended to be, a comprehensive description of the regulation. What is written about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Outline of provisions of the regulation

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Magistrates Court (Heritage Infringement Notices) Regulation 2020*.

Clause 2 Commencement

This clause provides for the commencement of the regulation. The regulation commences on the day after its notification day.

Clause 3 Dictionary

This clause provides that the dictionary at the end of the regulation is part of the regulation.

Clause 4 Notes

This clause explains the status of notes included in the regulation.

Clause 5 Purpose of regulation

This clause provides that the purpose of the regulation is to create a scheme for infringement notices for certain offences against the *Heritage Act 2004*.

Clause 6 Administering authority

This clause provides that the administering authority for an infringement notice offence against the *Heritage Act 2004* is the director-general with responsibility for that Act. The responsibilities of the administering authority are outlined in division 3.8.2 of the *Magistrates Court Act 1930*.

Clause 7 Infringement notice offences

This clause provides that part 3.8 of the *Magistrates Court Act 1930* applies to the offences against the *Heritage Act 2004* that are listed in schedule 1, column 2 of the regulation. Schedule 1 provides for infringement notice penalties for 2 offences against the Heritage Act:

- engaging in conduct that diminishes the heritage significance of a place or object (section 74 (3)); and
- engaging in conduct that causes damage to an Aboriginal place or object (section 75 (3)).

Clause 8 Infringement notice penalties

This clause provides that the penalty payable by an individual for an offence listed in schedule 1, column 2 is the amount listed in schedule 1, column 4. The penalty payable by a corporation is 5 times the amount mentioned in schedule 1, column 4 for the offence.

Both of the offences listed in schedule 1, column 2 have maximum penalties of 100 penalty units under the Heritage Act, and infringement notice penalties of \$1000 for an individual and \$5000 for a corporation under the regulation.

This penalty is considerably less than the maximum nominal 20 per cent of the maximum fine permitted by the *Guide for Framing Offences* (which would equate to \$3600 for an individual) and has been fixed at a level which is more commensurate with a strict liability offence.

Clause 3 (3) provides that the cost of serving 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 served on a person must identify the authorised person who is serving the infringement notice. The clause provides 2 options for identifying the authorised person:

- their full name, or surname and initials; or
- any unique number given to the authorised person by the administering authority.

Clause 10 Contents of infringement notices—other information

This clause provides that an infringement notice served on a company for an infringement notice offence against the Heritage Act must include the company's ACN.

Clause 11 Contents of reminder notices—identifying authorised person

This clause provides that a reminder notice served on a person must identify the authorised person who is serving the reminder notice. The clause provides 2 options for identifying the authorised person:

- their full name, or surname and initials; or
- any unique number given to the authorised person by the administering authority.

Clause 12 Authorised people for infringement notice offences

This clause provides that an authorised person may service an infringement notice or reminder notice for an infringement notice offence against the Heritage Act.

Authorised person is defined in the dictionary of the regulation to have the same meaning as *authorised person* in the dictionary of the Heritage Act.