

Magistrates Court (Public Health (COVID-19) Infringement Notices) Amendment Regulation 2021 (No 2)

Subordinate law SL2021-17

made under the

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

EXPLANATORY STATEMENT

Part 3.8 of the *Magistrates Court Act 1930* provides that offences prescribed by a regulation made under the Act can be dealt with by way of infringement notice. The *Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020* (the Regulation) was created to enable infringement notices to be issued for an offence contrary to section 120 (4) of the *Public Health Act 1997*.

While an emergency declaration under the *Public Health Act 1997* is in force, the Chief Health Officer may give any direction he or she considers to be necessary or desirable to alleviate the emergency. Section 120 (4) provides that it is an offence to fail to comply with such a direction without reasonable excuse. On 16 March 2020, the Minister for Health declared a public health emergency due to the risk posed by the outbreak of COVID-19. That declaration has been extended periodically and it is expected that there will be a continued need for the declaration to be further extended to ensure that measures can be taken to respond to the threat posed by COVID-19.

The infringement notice scheme created by the Regulation provides an alternative to prosecution when a person fails to comply with a direction of the Chief Health Officer where it is deemed that an infringement notice imposing a monetary fine is a sufficient penalty. The purpose of the scheme is to encourage compliance with the directions of the Chief Health Officer in relation to the COVID-19 emergency.

The penalty payable for an infringement notice offence under the Regulation is \$1000 for an individual and \$5000 for a corporation. In addition, an infringement notice under the Regulation may only be issued against a person who is 18 years or older.

The Amendment Regulation provides that where the offence is for a failure to comply with a face mask direction, the infringement notice penalty is \$200 for an individual and \$1,000 for a corporation. In addition, an infringement notice may be issued against

a person who is 16 years or older where the offence is for failing to comply with a direction to wear or carry a face mask.

As referred to in Explanatory Statement for the Regulation, the issuing of infringement notices by authorised persons under the *Public Health Act 1997* is subject to the oversight of the Access Canberra Regulatory Complaint Assessment Committee (RCAC).

Human rights implications

A police officer or other authorised person for the purpose of the Regulation must consider relevant human rights in making a decision in accordance with the requirement in section 40B of the *Human Rights Act 2004*.

The Amendment Regulation engages the following rights under the *Human Rights Act 2004*:

- a. right to life (section 9);
- b. right to liberty and security of person (section 18);
- c. rights of children in the criminal process (section 20);
- d. right to a fair trial (section 21);
- e. rights in criminal proceedings (section 22); and
- f. right to work and other work-related rights (section 27B).

The Amendment Regulation to reduce the infringement notice penalty payable for an offence against section 120 (4) of the *Public Health Act 1997* for failing to comply with a face mask direction is a less restrictive means of ensuring the protection of public health.

As an alternative to a prosecution, the payment of the infringement notice bars the prosecution of the person and the person is not taken to have been convicted of the offence (see section 125 of the *Magistrates Court Act 1930*). Further, Part 3.8.4 of the *Magistrates Court Act 1930* sets out the mechanism for a person to dispute liability for the infringement notice and this must appear in the infringement notice issued to the person. Where a person disputes liability and the administering authority determines that an information should be laid, the person is able to defend the charge. This mechanism together with other provisions of the existing criminal law supports the person's right to a fair trial and rights in criminal proceedings including the presumption of innocence under section 22 (1) of the *Human Rights Act 2004*.

The Amendment Regulation may limit the rights of children in the criminal process under section 20 of the *Human Rights Act 2014* as it extends the infringement notice scheme to apply to a person who is 16 years or older where it relates to an offence for failing to comply with a face mask direction. Any limitation on rights can be justified on

the basis that it is necessary for the purpose of protecting public health and is the least restrictive means to achieve this purpose. The extension of the infringement notice scheme in the limited circumstances of an offence for failing to comply with a face mask direction is appropriate and can be justified as the \$200 penalty amount is reasonable in the context of that age. It is also supported by public health advice in relation to the transmissibility of COVID-19 by young people and the effectiveness of masks as an infection control measure.

Clause notes

Clause 1 Name or Regulation

This clause provides that the name of the regulation is the Magistrates Court (Public Health (COVID-19) Infringement Notices) Amendment Regulation 2021 (No 2).

Clause 2 Commencement

This clause provides that the regulation commences the day after it is notified on the ACT Legislation Register.

Clause 3 Legislation amended

This clause provides that the regulation amends the *Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020*.

Clause 4 Section 7 (b)

This clause amends section 7 to provide that Part 3.8 of the *Magistrates Court Act 1930* applies to an offence against section 120 (4) of the *Public Health Act 1997* for failing to comply with face mask direction if the offence is committed by a person who is 16 years or older.

Part 3.8 of the *Magistrates Court Act 1930* continues to apply to an offence against section 120 (4) of the *Public Health Act 1997* in any other case if the offence is committed by a person who is 18 years or older.

Clause 5 Section 8 (1)

This clause amends section 8 to provide that for an offence for failing to comply with a face mask direction, the infringement notice penalty is \$200 for an individual or \$1,000 for a corporation.

The infringement notice penalty in any other case remains \$1000 for an individual or \$5000 for a corporation.

Clause 6 Dictionary, new definition of *face mask direction*

This clause inserts a definition of *face mask direction* in the Dictionary.