

**2021**

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

**Magistrates Court (Waste Management and Resource Recovery Infringement  
Notices) Amendment Regulation 2021 (No 1)**

**Subordinate Law No SL2021-25**

made under the **Magistrates Court Act 1930**

**EXPLANATORY STATEMENT**

Circulated by the authority of  
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## **Magistrates Court (Waste Management and Resource Recovery Infringement Notices) Amendment Regulation 2021 (No 1)**

### **Outline**

Part 3.8 of the *Magistrates Court Act 1930* provides for the issuing of infringement notices for offences listed in regulation. The *Magistrates Court (Waste Management and Resource Recovery Infringement Notices) Regulation 2017* creates a system of infringement notices for certain offences against the *Waste Management and Resource Recovery Act 2016* and the *Waste Management and Resource Recovery Regulation 2017*.

The *Waste Management and Resource Recovery Act 2016* and the *Waste Management and Resource Recovery Regulation 2017* provide for responsible practices in waste management and resource recovery and related matters.

The infringement notice scheme is intended to provide an alternative to prosecution where it is deemed that an infringement notice imposing a nominal monetary fine is a more efficient and appropriate course of action than prosecution in a court of law.

Under the *Magistrates Court Act 1930*, a person authorised to issue an infringement notice for an offence has the discretion to decide whether or not to issue an infringement notice and will be guided by the compliance policy in place at that time.

Public servants appointed as authorised people under the *Waste Management and Resource Recovery Act 2016* are authorised to issue infringement notices and reminder notices.

### **Human Rights Implications**

This regulation contains strict liability offences, as such, it 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. Where a defendant can reasonably be expected 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 *Waste Management and Resource Recovery Regulation 2017*, and additional new ones proposed through the amendments to the substantive regulation. Without the ability to issue infringement notices, the only option available to the regulating authority is to prosecute offences through the courts. 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** – provides that the regulation is the *Magistrates Court (Waste Management and Resource Recovery Infringement Notices) Amendment Regulation 2021 (No 1)*.

**Clause 2 - Commencement** – provides that the regulation commences on the commencement of the Waste Management and Resource Recovery Amendment Regulation 2021 (No 1), section 3.

**Clause 3** – Legislation amended – provides that the regulation amends the *Magistrates Court (Waste Management and Resource Recovery Infringement Notices) Regulation 2017*.

**Clause 4 – Section 7A - Declared offences—Act, s 117, definition of vehicle-related offence, par (b)** – provides that an offence against the legislation mentioned in this Regulation is an offence to which the *Magistrates Court Act 1930*, division 3.8.3 applies. That division provides for the service of infringement notices for vehicle-related offences. It provides the capacity for authorised persons to issue infringement notices, and attaches liability to the person responsible for the vehicle. It provides for declarations to allocate responsibility to persons other than those originally identified as being responsible, in cases where the vehicle has been illegally used, sold, or where the operator at the time of the offence is not the person identified as responsible but is identified by way of a known offender declaration.

### **Clause 4 – Section 7B – Declared Act – known offender declarations Act s 131E(1)(b)(iii)**

This clause aims to provide suitable provisions in the case that passengers may commit the offences rather than drivers.

Under s 131C of the *Magistrates Court Act 1930*, the responsible person for a vehicle is liable for the offence even though the person who committed the offence may be someone else. However, s 131C (3) provides various defences including that the vehicle was sold or stolen, and where a known offender declaration is made under s 131E. New section 7B provides that the *Waste Management and Resource Recovery Act 2016* is a declared Act for the purposes of the *Magistrates Court Act*, section 131E (1) (b) (iii).

This means that the responsible person can provide details if someone else committed the offence. If they do not do so (or do not complete one of the other declarations such as a sold vehicle declaration), the responsible person for the vehicle will be held liable for the offence, even if it was committed by a passenger.

Offences have not been included involving the dumping of boats or trailers, since any dumping of a boat or trailer that is captured on camera would involve a vehicle in some way (towed behind or carried on the vehicle). If the boat or trailer has been dumped off camera and is unregistered, there would be no way to connect it to a responsible person.

**Clause 5 – Schedule 1, part 1.2, table, new items 9 to 17** – the table identifies (Column 2) offence provisions from the *Waste Management and Resource Recovery Amendment Regulation 2021 (No 1)* to which this Regulation and the *Magistrates Court Act 1930*, division 3.8.3 applies.

This table sets out the new infringement notice offences (for which on-the-spot fines can be issued). It sets out the infringement penalty dollar amount based on existing penalties in

schedule 1, part 1.2 of the *Magistrates Court (Waste Management and Resource Recovery Infringement Notices) Regulation 2017 (No 1)*. The table below provides information about the offences which are being made into vehicle-related infringement notice offences. They are taken to involve a vehicle if the person commits the offence after exiting, or before entering a vehicle in or near the waste facility.

	Application of proposed new vehicle related offences	Penalty units	Fee
24AC (1)	Disposal of regulated waste at a waste facility	10	\$300
24AE (1)	Disposal of waste in contravention of a sign on or near a waste container at a waste facility	20	\$600
24AE (3)	Disposal of waste in contravention of a sign on or near a waste container at a waste facility	5	\$150
24AF (1)	Interfering with waste etc at a waste facility by damaging or contaminating waste with the result that it is unsuitable for its intended waste processing	10	\$300
24AF (2) (a)	Interfering with waste etc at a waste facility by entering an area at the facility in contravention of a sign at the facility	5	\$150
24AF (2) (b)	Interfering with waste etc at a waste facility by removing waste from a waste container in the waste facility	5	\$150
24AF (2) (c)	Interfering with waste etc at a waste facility by damaging or altering a waste container or any part of the waste container	5	\$150
24AG (1)	Failure to comply with direction of a waste facility operator	10	\$300
24AH (1)	Waste transporter failure to give the operator of the facility information about the amount of waste and waste category for the waste	10	\$300