

2023

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

**MAGISTRATES COURT (CIRCULAR ECONOMY INFRINGEMENT NOTICES)
REGULATION 2023**

SL2023-26

EXPLANATORY STATEMENT

**Presented by
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CIRCULAR ECONOMY REGULATION 2023

This explanatory statement relates to the *Magistrates Court (Circular Economy Infringement Notices) Regulation 2023* 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.

OVERVIEW

The *Magistrates Court (Circular Economy Infringement Notices) Regulation 2023* (the Regulation) is being made under part 3.8 of the *Magistrates Court Act 1930* and will enable infringement notices to be issued for certain offences against the *Circular Economy Act 2023*. Infringement notices are 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 Regulation enables authorised persons under section 25 of the *Circular Economy Act 2023* to issue infringement notices and reminder notices. Under the *Magistrates Court Act* a person authorised to issue an infringement notice for an offence has the discretion to decide whether or not to issue a notice.

The *Circular Economy Act 2023* repealed the *Plastic Reduction Act 2021* and provides a comprehensive framework for the reduction of plastic and the management of other waste streams to promote a circular economy. The ability to issue infringement notices for offences against the *Circular Economy Act* will encourage compliance with the legislation and will allow for immediate action to be taken against people who are breaching the law.

HUMAN RIGHTS IMPLICATIONS

This regulation contains strict liability offences, as such, it might be seen to engage the presumption of innocence. 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. In a strict liability offence, there is no requirement to establish a fault element, such as intention, recklessness, or negligence and the prosecution need only show that the defendant did the prohibited act.

Strict liability offences arise in a regulatory context where for reasons such as environmental 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.

This regulation does not create any new offences. This regulation introduces infringement notices for the following strict liability offences in the *Circular Economy*

Act 2023, which have been carried over from the *Plastic Reduction Act 2021* with some expansion to allow them to apply to non-plastic products in future:

- supplying a prohibited product at section 17;
- not complying with a notice to dispose of prohibited products at section 19;
- supplying declared products at a declared public event at section 22;
- not complying with an exemption condition at section 23;
- not returning an identity card at section 26; and
- not complying with direction to give name and address at section 30.

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.

While an infringement notice scheme offers the opportunity for a person to pay the infringement notice rather than face prosecution, it does not prevent them from choosing to challenge the notice and instead face prosecution in court, so the minimum guarantees in criminal proceedings under section 22(2) and rights to a fair trial under section 21 of the Human Rights Act remain available and are not undermined by the possibility of an infringement notice scheme.

A less restrictive approach (namely, not creating infringement notices for these offences) would still enable enforcement but would not be as effective as a deterrent and would only be feasible to enforce for larger-scale breaches. Given the educative approach to circular economy changes, the effectiveness of deterrence is critical to generate wide-scale behavioural change. A less restrictive approach would not achieve this and would thus not induce the myriad of changes to practices that are needed to move towards a circular economy for the ACT.

The limitation on this right is for the legitimate purpose of moving toward a circular economy and reducing negative environmental and waste management impacts of the use of single-use plastics. The use of strict liability offences directly supports the effective enforcement of the *Circular Economy Act 2023* which will create a deterrent for businesses from breaching the law regarding prohibited plastic products. This infringement notice scheme is proportionate because it is a reasonable and qualified limitation of the right and is targeted to its legitimate purpose of supporting enforcement to achieve the circular economy objectives of the Bill.

SUMMARY OF CLAUSES

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Magistrates Court (Circular Economy Infringement Notices) Regulation 2023*.

Clause 2 Commencement

This clause provides for the commencement of the regulation on the day section 3 of the *Circular Economy Act 2023* commences.

Clause 3 Dictionary

This clause provides that the dictionary at the end of the regulation is part of the regulation. The dictionary defines certain terms used in the regulation.

Clause 4 Notes

This clause provides that a note found in the regulation is explanatory and is not part of the regulation.

Clause 5 Purpose of regulation

This clause provides that the purpose of the regulation is to provide for infringement notices under the Magistrates Court Act, part 3.8, for certain offences against the Circular Economy Act.

Clause 6 Administering authority

This clause provides that the administering authority for an infringement notice offence under the regulation is the director-general of the Transport Canberra and City Services Directorate the Circular Economy Act.

Clause 7 Infringement notice offences

This clause provides that the Magistrates Court Act, part 3.8, applies to an offence against a provision of the Circular Economy Act mentioned in the regulation in schedule 1, column 2.

Clause 8 Infringement notice penalties

This clause provides that the penalties for the offences against the Circular Economy Act are listed in column 4 of schedule 1. Penalties for an offence by a corporation are five times that applicable for an individual.

This regulation 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. An authorised person may be identified in the notice by their full name, or surname and initials. Alternatively, the infringement notice may identify the authorised person by any unique number given to them by the administering authority.

Clause 10 Contents of infringement notices – other information

This clause specifies that infringement notices served on a company must include the company's ACN.

Clause 11 Contents of reminder notices – identifying authorised person

This clause provides that a reminder notice must identify the authorised person who served the notice. An authorised person may be identified in the notice by their full name, or surname and initials. Alternatively, the reminder notice may identify the authorised person by any unique number given to them by the administering authority.

Clause 12 Authorised people for infringement notice offences

This clause provides that an authorised person under the Circular Economy Act, section 111 may serve infringement notices and reminder notices for infringement notice offences.

Clause 13 Prescribed person—Act, s 135 (1)

This clause provides that the waste manager is a prescribed person for this regulation. Section 135 of the *Magistrates Court Act 1930* allows the administering authority for the regulation to delegate their power under to either a prescribed person or an authorised person.

The Waste Manager is a statutory position appointed under section 16 of the *Waste Management and Resource Recovery Act 2016*.

Schedule 1

This schedule outlines the offence penalty and infringement penalties for offences under the Circular Economy Act 2023.

Dictionary

This is the dictionary for the Regulation.