

Australian Capital Territory

Magistrates Court (Professional Engineers Infringement Notices) Regulation 2024

Subordinate law SL2024–18

made under the

Magistrates Court Act 1930, s 119 (Regulations about infringement notice offences)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Magistrates Court (Professional Engineers Infringement Notices) Regulation 2024* (the **regulation**) as made by the Executive. It has been prepared to assist the reader of the regulation and to help inform debate on it. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said 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 regulation is being made in accordance with part 3.8 of the *Magistrates Court Act 1930* (Magistrates Court Act) and will enable infringement notices to be issued for certain offences against the *Professional Engineers Act 2023* (the Professional Engineers Act). 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 a professional engineers officer to issue an infringement notice to a person who has committed a strict liability offence under the Professional Engineers Act. 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 Professional Engineers Act establishes a registration scheme for professional engineers; provides for the monitoring and enforcement of compliance with the Act and imposes obligations on people registered about the provision of professional engineering services.

The ability to issue infringement notices for offences against the Professional Engineers Act will encourage compliance with the legislation and will allow for immediate action to be taken against people who are breaching the law.

This regulation does not create any new offences. This regulation introduces infringement notices for the following strict liability offences in the Professional Engineers Act:

- section 29 (3) – fail to give notice about change of information within the required timeframe
- section 58 (2) – carry out a professional engineering service other than under the direction and oversight of a professional engineer who is responsible for the service and is not registered to carry out the professional engineering service
- section 59 (2) – make a false or misleading representation that the person is registered to carry out a professional engineering service and the representation is false or misleading in a material particular
- section 60 (1) – fail to comply with a condition of registration
- section 61 (2) – fail to comply with a requirement of a code of practice that applies to the professional engineer

The strict liability offence in section 59 (2) of the Professional Engineers Act covers the making of a false or misleading representation that the person is registered to carry out a professional engineering service and that representation is false or misleading in a material particular.

Material particulars this offence is designed to address are:

1. People who hold themselves out to be registered when they are not
2. People who hold themselves out to be registered in a prescribed area of engineering when they are not
3. People who hold themselves out to be registered in a prescribed area of engineering and able to provide those engineering services in the building and construction industry when they are not
4. People who make representations about their registration that are not in accordance with any conditions placed on their registration
5. People who make representations that they are registered while their registration is suspended; and
6. People who make representations that they are registered and their registration is cancelled.

These are all material particulars specifically within the knowledge of the person. This is due to them being registered, the significant community and industry information about the requirement to be registered in the ACT and the Ministerial guideline on the scope of services within each prescribed area of engineering.

SCRUTINY OF BILLS COMMITTEE PRINCIPLES

Infringement notice schemes arguably engage section 22 of the *Human Rights Act 2004* (the Human Rights Act) and engage the Scrutiny Committee terms of reference by introducing liabilities. This explanatory statement addresses these engagements through the inclusion of the following human rights assessment.

CONSISTENCY WITH HUMAN RIGHTS

During the development of this regulation due regard was given to its compatibility with human rights as set out in the Human Rights Act. An assessment of the regulation against section 28 of the Human Rights Act is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Rights Limited

Rights in criminal proceedings

Section 22 (1) of the Human Rights Act provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Nature of the right and the limitation (s 28 (2) (a) and (c))

This regulation creates infringement notice penalties for strict liability offences in the Professional Engineers Act and as such, it might be seen to engage the presumption of innocence.

This regulation does not create any offences. This regulation introduces infringement notices for five strict liability offences in the Professional Engineers Act.

Strict liability offences engage section 22 (1) of the Human Rights Act as 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.

Legitimate purpose (s 28 (2) (b))

The infringement notice scheme created by this regulation provides an additional compliance mechanism which allows an infringement notice to be issued to a person who has committed certain strict liability offences under the Professional Engineers Act. This supports the objective of the Professional Engineers Act which is to uphold the standards of practice for professional engineers in the ACT.

The human rights assessment for the Professional Engineers Act contained an assessment against section 22 (1) of the Human Rights Act for the strict liability offences created by that Act.

Rational connection between the limitation and the purpose (s 28 (2) (d))

Appropriate regulatory actions are essential to building community and industry confidence in the regulatory oversight undertaken by Government of professional engineers. Infringement notices are an important component of an effective regulatory framework by providing a deterrent to non-compliance and an alternative to prosecution. Effective infringement notice schemes minimise the cost of litigation for

the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

Infringement notice penalties are typically applied to strict liability offences that arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring compliance with regulatory schemes, a range of penalties are required.

The intention of introducing infringement notice penalties for strict liability offences introduced in the Professional Engineers Act is to support an effective regulatory scheme. Infringement notice penalties are just one enforcement action that the Professional Engineers Registrar can take in relation to breaches of the Professional Engineers Act. Other actions include taking regulatory action, such as licence suspension, under the Professional Engineers Act.

As with many regulatory frameworks involving registration, the inclusion of infringement notice penalties supports a regulatory framework that is intended to provide enhanced consumer protection outcomes for persons interacting with the professional engineering industry.

Proportionality (s 28 (2) (e))

Infringement notices are an important component of an effective regulatory framework by providing a deterrent to non-compliance and an alternative to prosecution. Effective infringement notice schemes minimise the cost of litigation for the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

Under the Magistrates Court Act a person authorised to issue an infringement notice for an offence has discretion to decide whether to issue the notice. Also, a person issued with an infringement notice has the option to pay the notice, seek an extension of time to pay, enter into an infringement notice management plan, apply to have the infringement notice waived or withdrawn, or dispute the notice.

It should be noted that paying an infringement notice is not an acceptance of guilt. If a person declines to pay an infringement notice, the Professional Engineers Registrar has the discretion to either proceed with a prosecution or cease action.

Any breaches of the offence framework will be managed through an ‘engage, educate and enforce’ compliance process. This provides a safeguard to ensure the limitation on any rights is reasonable and proportionate. Should a breach occur, conduct that contravenes the legislative framework will be considered on a case-by-case basis and within its own context.

The Professional Engineers Registrar sits within Access Canberra and applies the Access Canberra Accountability Commitment and takes a risk-based approach to taking regulatory action.

The strict liability offences in the Professional Engineers Act are framed with clear criteria as to whether the offence has occurred. The clear framing of offences, as well as strong communication around the obligations of professional engineers are important safeguards on individual rights, and ensure the proportionality of introducing infringement notice penalties.

The offences and penalties are consistent with the ACT Government *Guide for Framing Offences* and are considered proportionate to the purpose of the Professional Engineers Act.

REGULATORY IMPACT STATEMENT

A regulatory impact statement is not required as the regulation is a matter of an administrative nature (section 36 (1) (a) of the *Legislation Act 2001*).

SUMMARY OF CLAUSES

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Magistrates Court (Professional Engineers Infringement Notices) Regulation 2024*.

Clause 2 Commencement

This clause provides for the commencement of the regulation on the day section 5 of the *Professional Engineers 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 *Professional Engineers Act 2023*.

Clause 6 Administering authority

This clause provides that the administering authority for an infringement notice offence under the regulation is the professional engineers registrar established by section 10 of the *Professional Engineers Act 2023*.

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 *Professional Engineers Act 2023* 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 *Professional Engineers Act 2023* 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 a professional engineers officer may serve infringement notices and reminder notices for infringement notice offences.

A professional engineers officer means any of the following:

- a. the professional engineers registrar
- b. a deputy professional engineers registrar appointed under section 12 of the *Professional Engineers Act 2023*
- c. a person appointed as an authorised person under section 48 of the *Professional Engineers Act 2023*

Schedule 1 Professional Engineers Act 2023 infringement notice offences and penalties

This schedule outlines the offence penalty and infringement penalties for offences under the *Professional Engineers Act 2023*.

Dictionary

This is the dictionary for the Regulation.