

Australian Capital Territory

Magistrates Court (Building Infringement Notices) Amendment Regulation 2024 (No 2)

Subordinate law SL2024–26

made under the

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

EXPLANATORY STATEMENT

This explanatory statement relates to the *Magistrates Court (Building Infringement Notices) Amendment Regulation 2024 (No 2)* (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* (the **Magistrates Court Act**) and removes the ability to issue infringement notices for certain offences against the *Building Act 2004* (the **Building Act**). The offences being removed are considered to be best managed through the demerit point system. Section 89 of the *Construction Occupations (Licensing) Act 2004* currently prevents the issuing of demerit points for offences that have an infringement notice penalty.

This amendment regulation amends schedule 1 of the *Magistrates Court (Building Infringement Notices) Regulation 2008* to remove the following offences from having an infringement notice penalty:

- Carrying out building work in contravention of section 42 (section 51 (1))
Carrying a maximum penalty of 50 penalty units and an infringement penalty of \$1250.

- Compliance with notices under part 4 (section 64 (1)) Carrying a maximum penalty of 50 penalty units and an infringement penalty of \$1250.
- Compliance with notices under part 4 (Section 64 (2)) Carrying a maximum penalty of 50 penalty units and an infringement penalty of \$1250.

SCRUTINY OF BILLS COMMITTEE PRINCIPLES

This explanatory statement meets the technical or stylistic standards expected by the Committee. 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 2004* (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.

Infringement notice schemes arguably engage section 22 of the Human Rights Act and engage the Scrutiny Committee terms of reference. As this regulation is removing infringement notice penalties not introducing new ones, it is not considered to engage section 22 of the Human Rights Act or engage the Scrutiny Committee terms of reference.

This regulation could be seen to engage and limit the right to work as demerit points are considered to be a form of disciplinary action under the *Construction Occupations (Licensing) Act 2004* (the ***COLA***) that can lead to conditions being placed on a licence or licence suspension. These actions can result in limiting or preventing the licensee from undertaking work in scope of the licence held. A person's licence can also be suspended or disqualified under the COLA if the licensee has incurred 15 or more demerit points for a construction occupation within the previous 3 years.

This regulation could also be seen to engage and limit the right to privacy as under the COLA, the Construction Occupations Registrar is required to keep a demerit points register. The COLA does not stipulate the specific information to be held on the demerit points register but this includes the licensee's name, licence number, business phone number and email and demerit points. This register is not publicly available, and section 102 of the COLA requires the Construction Occupations Registrar to ensure that information on the demerit points register is secure and only disclosed in accordance with that Act or another law in force in the ACT.

In addition to the demerit points register, the Construction Occupations Registrar must maintain a public register of licensee information which includes details of any licence suspensions or disqualifications as a result of incurring demerit points and any conditions on a licence. Information about demerit points that do not meet the threshold for suspension or disqualification are not published on the public register.

Appropriate regulatory actions are essential to building community trust and confidence in the ACT's building and construction industry and in the regulatory oversight undertaken by Government. This promotes public safety and supports the Government's commitment to building quality and an industry that is held

accountable for their actions and a regulatory system that provides greater protection to the community and lifts standards across the sector.

There is a high expectation that the building and construction sector will comply with the requirements of the Building Act, and it is important that those requirements are enforced through appropriate penalties to protect the community. Appropriate penalties in this instance include demerit points which cannot currently be issued for offences for which an infringement notice can be issued by virtue of section 89 of the COLA. Demerit points can be issued under COLA for contraventions of that Act and any operational Act, such as the Building Act, and are considered to be the most effective deterrent for these offences and to hold industry accountable for their actions.

Any breaches of the Building Act are managed through an ‘engage, educate and enforce’ compliance process. The Construction Occupations Registrar sits within Access Canberra and applies the Access Canberra Accountability Commitment and takes a risk-based approach to taking regulatory action. The Access Canberra Accountability Framework includes the [Building and construction services compliance framework](#), which is publicly available.

It is also an important consumer protection measure and part of the Government’s commitment to an accountable and transparent building and construction sector to have information about disciplinary action taken against licensees publicly available. Publishing details about licensees and former licensees allows members of the public and industry to access information required to enable them to make informed choices when entering a relationship with a licensed construction professional. The information that is required to be available on the public register is limited to the minimum information required to enable consumers and industry to make informed decisions about whether to engage with a particular licensed construction professional. The particulars which are to be included in the public register are prescribed in the *Construction Occupations (Licensing) Regulation 2004*. Information on the register is published in accordance with section 107A of the COLA and is removed from the register in accordance with that provision. The demerit point system under COLA is well-established in the ACT and core enforcement tool for the regulator. Reducing the Regulator’s ability to use this tool is not consistent with Government policy in relation to building quality in the ACT and enforcement and compliance models based on risk.

REGULATORY IMPACT STATEMENT

A regulatory impact statement is not required for this regulation under section 34 of the *Legislation Act 2001* (the ***Legislation Act***) as it is not likely to impose appreciable costs on the community, or a part of the community. It is amending an existing regulation to remove a form of penalty for breaches of the Building Act, not imposing new regulation on the community. In addition, in accordance with section 36 of the *Legislation Act*, a regulatory impact statement is not required as the regulation does not operate to the disadvantage of anyone adversely affecting a person’s rights or imposing liabilities.

SUMMARY OF CLAUSES

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Magistrates Court (Building Infringement Notices) Amendment Regulation 2024 (No 2)*.

Clause 2 Commencement

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

Clause 3 Legislation amended

This clause provides that the regulation amends the *Magistrates Court (Building Infringement Notices) Regulation 2008*.

Clause 4 Schedule 1, part 1.1, items 8 to 10

This clause omits items 8 to 10 from part 1.1 of Schedule 1. Schedule 1 provides the schedule of offence provisions, offence penalties (penalty units) and infringement penalties for offences under the *Building Act 2004*.