

# SUPPLEMENTARY EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Telecommunications Act 1997*

## ***Telecommunications (Infringement Notices) Guidelines 2022***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Telecommunications (Infringement Notices) Guidelines 2022* (**the Guidelines**) under subsection 572M(2) of the *Telecommunications Act 1992* (**the Telecommunications Act**).

This supplementary explanatory statement amends the explanatory statement to the instrument as set out below.

### **Notes to the *Telecommunications (Infringement Notices) Guidelines 2022***

#### **Section 9      Infringement Notices**

##### *Request for an extension of time in which to pay the penalty*

After the second paragraph, insert:

The ACMA will give any request for an extension of time to pay the penalty all due and proper consideration. Payment of an infringement notice is always voluntary and if the notice lapses without its having been paid the recipient of the notice is not thereby rendered in breach of anything or liable for anything.

Any decision to extend the time in which to pay the penalty is made under subparagraph 572F(1)(d)(ii) of the Telecommunications Act.

Under the Telecommunications Act, a decision made by the ACMA under subparagraph 572F(1)(d)(ii) is not a decision to which internal reconsideration and merits review will apply.

##### *Withdrawal of an infringement notice*

After the third paragraph, insert:

As the payment of an infringement notice is voluntary, if the recipient of a notice asked for it to be withdrawn, and the ACMA decided not to withdraw the notice, there is no requirement for the recipient to have to pay the notice. If the notice lapses without its having been paid the recipient of the notice is not thereby rendered in breach of anything or liable for anything.

The decision to withdraw an infringement notice is made under section 572H of the Telecommunications Act.

Under the Telecommunications Act, a decision made by the ACMA under section 572H is not a decision to which internal reconsideration and merits review will apply.

##### *Merit review*

In terms of the Administrative Review Council's guidance document *What decisions should be subject to merit review?*, decisions under subsections 9.8 to 9.13 of the Guidelines do not warrant the application of merits review because:

- merits review is not necessary to ensure fair treatment of persons affected (paragraph 1.4); and/or

- the decisions concerned are not likely to have an effect on the interests of persons (paragraph 2.4); and/or
- the decisions concerned have such a limited impact that merits review of them would not be proportionate to the costs of review (paragraph 4.56).

### *Publication*

After the second paragraph, insert:

Information about paid infringement notices is public information as an infringement notice is a substitute for what could otherwise be civil penalty proceedings conducted in a public court. An infringement notice is effectively an offer, which the recipient can accept or not, as they see fit. Acceptance of the offer will involve the usual consequence that the outcome will be a public fact so that regulatory action taken by the regulator is transparent and exposed to public scrutiny.

The ACMA is subject in all relevant respects to the *Privacy Act 1988* and the Australian Privacy Principles and has a formal Privacy Management Plan. If an individual is named in an infringement notice, the disclosure of that personal information would be permitted under Australian Privacy Principle 6.2(a) on the basis that a recipient is given notice regarding publication when the ACMA issues an infringement notice and consequently an individual who pays the penalty specified in a notice should reasonably expect the ACMA to disclose the information for that purpose.

There may be some occasional circumstances where personal information of a third party, such as a complainant's phone number, may be included in an infringement notice. In these circumstances, the ACMA redacts this personal information of the third party before publishing the notice and consequently no personal information is disclosed.

While there are no formal review rights, the ACMA will always give due and proper consideration to any submissions made to it as to how it might exercise its discretions to publish.