



# Telecommunications (Infringement Notices) Guidelines 2022

*Telecommunications Act 1997*

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The Australian Communications and Media Authority makes the following Guidelines under subsection 572M(2) of the *Telecommunications Act 1997*.

Dated: 3 March 2022

James Cameron  
[signed]  
Member

Cathy Rainsford  
[signed]  
~~Member~~/General Manager

Australian Communications and Media Authority

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## 1 Name

These are the *Telecommunications (Infringement Notices) Guidelines 2022*.

## 2 Commencement

These guidelines commence at the start of the day after the day they are registered on the Federal Register of Legislation.

Note: The Federal Register of Legislation may be accessed free of charge at [www.legislation.gov.au](http://www.legislation.gov.au).

## 3 Authority

These guidelines are made under subsection 572M(2) of the *Telecommunications Act 1997*.

## 4 Repeal

The *Telecommunications (Infringement Notices) Guidelines 2011* (Registration No. F2011L02380) are repealed.

## 5 Definitions and interpretation

5.1 In these guidelines, unless the contrary intention appears:

*ACMA* means the Australian Communications and Media Authority.

*ACMA Act* means the *Australian Communications and Media Authority Act 2005*.

*TCPSS Act* means the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

*Telecommunications Act* means the *Telecommunications Act 1997*.

*TIA Act* means Chapter 5 of the *Telecommunications (Interception and Access) Act 1979*.

5.2 Unless the contrary intention appears, expressions used in these guidelines and the Telecommunications Act have the same meaning in the guidelines as they have in the Telecommunications Act.

## 6 References to other instruments

In these guidelines, unless the contrary intention appears:

- (a) a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- (b) a reference to any other kind of instrument is reference to that other instrument as in force from time to time.

Note 1: For references to Commonwealth Acts, or any other instruments, see section 589 of the Telecommunications Act, and section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

## **7 Introduction**

- 7.1 The ACMA is an independent statutory authority established under section 6 of the ACMA Act. The ACMA's telecommunications functions are set out in section 8 of that Act.
- 7.2 Section 4 of the Telecommunications Act states that Parliament intends that telecommunications be regulated in a manner that:
- (a) promotes the greatest practicable use of industry self-regulation;
  - (b) does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry;
- but does not compromise the effectiveness of regulation in achieving the objects of the Act which are set out in section 3 of the Act.
- 7.3 The ACMA has made these guidelines under subsection 572M(2) of the Telecommunications Act which provides that the ACMA may formulate guidelines for the purposes of the exercise of infringement notice powers under Part 31B of the Telecommunications Act. These are the guidelines in force for the purposes of subsection 572M(3) of the Telecommunications Act.
- 7.4 The guidelines highlight the discretionary factors which an authorised infringement notice officer would generally consider in the exercise of their powers conferred under Part 31B of the Telecommunications Act.
- 7.5 The guidelines take into account the objects of, and regulatory policy underpinning, the Telecommunications Act (in particular sections 3 and 4 of the Telecommunications Act), the TCPSS Act and the TIA Act.
- 7.6 While the guidelines seek to provide guidance to the regulated community, the ACMA retains the discretion to impose or seek remedies and sanctions which it considers appropriate in the light of the particular circumstances of each case.

## **8 Exercising enforcement powers**

- 8.1 The ACMA's compliance and enforcement approach is to take action that is commensurate with the seriousness of the conduct. This approach includes consideration of the nature and consequences of the conduct, while seeking to avoid the imposition of undue financial and administrative burdens on the telecommunications industry. There are a range of factors which may be considered by the ACMA in determining the appropriate enforcement response including, but not limited to:
- (a) whether the conduct was deliberate, reckless or inadvertent;
  - (b) whether the conduct has caused, or may cause, detriment to another person and the nature, seriousness and extent of that detriment;
  - (c) whether the conduct involved indicates systemic issues which may pose ongoing compliance or enforcement issues;
  - (d) whether the regulated entity or person has been the subject of prior compliance or enforcement action and the outcome of that action;
  - (e) the compliance history and culture of the regulated entity;
  - (f) the specific and general educative and/or deterrent effect of taking action;
  - (g) the seniority and level of experience of the person(s) involved in the conduct;
  - (h) what, if any, action has been taken to remedy and address the consequences of the conduct;
  - (i) whether the subject of the investigation has co-operated with the ACMA;

- (j) whether the issues involved require urgent action or intervention by the ACMA.

## **9 Infringement notices**

- 9.1 Infringement notices are designed to provide a timely, cost-efficient enforcement outcome and an alternative to court proceedings. An authorised infringement notice officer may, if they have reasonable grounds to believe that a person has contravened a particular civil penalty provision in the Telecommunications Act, TCPSS Act or the TIA Act, give the person an infringement notice relating to the contravention(s). However, in the case of certain civil penalty provisions, namely sections 68 and 101 of the Telecommunications Act, an infringement notice may only be given in respect of certain kinds of contraventions of those provisions (see subsections 572E(5) and (6) of the Telecommunications Act and the instrument listing infringement notice provisions which is made for the purposes of subsection 572E(7) of the Telecommunications Act<sup>1</sup>).
- 9.2 There is no obligation on the ACMA to give an infringement notice (section 572K of the Telecommunications Act) in relation to an alleged contravention. There are a range of factors which the ACMA may consider in determining whether an infringement notice should be given (see section 8 of these Guidelines). Examples of matters where an infringement notice may not be appropriate may include where:
- (a) the ACMA has previously taken action against the relevant person or entity for similar contraventions;
  - (b) the contraventions have occurred over an extended period of time;
  - (c) the person or entity has, as a consequence of the contraventions, obtained a financial or other advantage, to the detriment of others;
  - (d) the conduct should more properly be the subject of other compliance or enforcement action by the ACMA because, for example, it is not serious enough to warrant the issue of an infringement notice or because it is too serious to be adequately dealt with by an infringement notice.
- In each case all the relevant facts and circumstances will be taken into account in determining whether an infringement notice should be given.
- 9.3 The decision to give an infringement notice must be made by the Chair of the ACMA or a member of the staff of the ACMA appointed by the ACMA as an authorised infringement notice officer under section 572L of the Telecommunications Act.
- 9.4 An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place (subsection 572E(2) of the Telecommunications Act).
- 9.5 Payment of the penalty in accordance with the infringement notice, or within such other period agreed to by the ACMA, prevents the ACMA from commencing proceedings under Part 31 of the Telecommunications Act for the imposition of a civil penalty for the alleged contravention (section 572J of the Telecommunications Act). Upon payment, the liability of the person for that alleged contravention is discharged.
- 9.6 In the event that payment is not made in accordance with the infringement notice, or the longer period (if any) agreed to by the ACMA, the ACMA may take action, including commencing proceedings for the imposition of a pecuniary penalty under Part 31 of the Telecommunications Act.

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<sup>1</sup> As at the date these guidelines were made that instrument made for the purposes of subsection 572E(7) of the Telecommunications Act was the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2011*.

*Content of an infringement notice*

- 9.7 An infringement notice issued by the ACMA under Part 31B of the Telecommunications Act will, among other things:
- (a) state the name of the person to whom the notice is given;
  - (b) state the date on which the notice is given;
  - (c) set out brief details of the alleged contravention, including the date of the alleged contravention and the civil penalty provision that was allegedly contravened;
  - (d) if the alleged contravention of a civil penalty provision consists of a breach of a provision of another Act or instrument – identify that provision and set out brief details of the alleged breach;
  - (e) state the relevant penalty units and the amount of the penalty imposed;
  - (f) set out the date by which payment is due, how the payment is to be made and to whom payment should be addressed (see discussion below concerning requests for extensions of time);
  - (g) state that the person to whom a notice is given has the right to request an extension of time to pay;
  - (h) state that, following payment of the penalty, further proceedings will not be taken with respect to the alleged contravention, and that the liability of the person for that alleged contravention is discharged;
  - (i) explain that the ACMA may withdraw the infringement notice within 28 days of giving the notice and must, if the penalty has already been paid, refund the penalty (see discussion below concerning applications for withdrawal);
  - (j) set out the name of the authorised infringement notice officer who gave the notice and the contact details of the person to whom enquiries concerning the notice may be directed.

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

- 9.8 Generally, the penalty is required to be paid within 28 days after the notice is given. However, the ACMA may extend the time for payment (paragraph 572F(1)(d) of the Telecommunications Act).
- 9.9 Requests for extensions of time must be received before the due date for payment and will be considered on a case-by-case basis. Requests should be directed to the contact officer specified in the infringement notice in the first instance.

*Withdrawal of an infringement notice*

- 9.10 An infringement notice may be withdrawn by the ACMA of its own volition or following a request for withdrawal from the recipient of the notice. To be effective, the withdrawal must occur within 28 days after the notice was given (subsection 572H(3) of the Telecommunications Act). A request for withdrawal should be made as early as possible to allow sufficient time for the request to be considered and a decision made within the 28 days after the notice was given.
- 9.11 Factors that may have a bearing on whether a notice should be withdrawn may include whether there is further information or evidence which suggests that:
- (a) the recipient of the notice did not breach the relevant civil penalty provision; or
  - (b) the conduct is more serious than initially believed and, as a consequence, the matter would be more appropriately dealt with by the court.

- 9.12 The decision as to who should consider an application for withdrawal of a notice will be made in light of the facts of the case including the basis/reasons for the request. In most cases it will be the authorised infringement notice officer who gave the notice who will be best placed to consider the request. As the issuing officer, they will be aware of the factual issues and will be in a position to make an informed decision within the 28 days, taking into account the reasons for the request and any new information or facts presented, as to whether the information presented alters their belief that the person has contravened the relevant civil penalty provision.
- 9.13 Requests for withdrawal should therefore be directed in the first instance to the authorised infringement notice officer named in the notice.

*Effect of withdrawal of an infringement notice*

- 9.14 If the infringement notice is withdrawn after payment of the penalty, the penalty paid will be refunded.
- 9.15 If an infringement notice is withdrawn, the ACMA will consider whether further action is appropriate. That action may include the institution of civil penalty proceedings with respect to the alleged contravention or contraventions that were the subject of the infringement notice (subparagraph 572K(b)(iii) of the Telecommunications Act). What further action is appropriate, if any, will turn on the facts of the case.

*Publication*

- 9.16 The ACMA's general approach to publication of infringement notices given under Part 31B of the Telecommunications Act is:
- (a) it will not publicise the giving of the infringement notice to an identified person;
  - (b) it will not publicise that an identified person did not pay the penalty specified in the infringement notice;
  - (c) it will publicise an outcome where a person has paid the penalty specified in an infringement notice given by the ACMA<sup>2</sup>.
- 9.17 In the ACMA's view, publication of the fact that an identified person has paid the penalty specified in an infringement notice may have an educative and deterrent effect.
- 9.18 In determining whether publication should occur, the ACMA considers a range of factors including:
- (a) the seriousness and significance of the contravention;
  - (b) whether the conduct resulting in the infringement notice raised novel issues;
  - (c) whether the conduct resulting in the infringement notice has identified systematic or industry-wide issues.
- 9.19 The ACMA may also publish aggregated information from time to time concerning the giving of, and compliance with, infringement notices given under Part 31B of the Telecommunications Act, without identification of the recipients of the notices.

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<sup>2</sup> See also the ACMA Regulatory guide – No.6 – Publication of investigations and enforcement actions available at: <https://www.acma.gov.au/regulatory-guides>