

Telecommunications infringement notices

The ACMA has responsibility under the *Telecommunications Act 1997* for technical regulation of telecommunications customer equipment and customer cabling. The ACMA generally takes a graduated approach in encouraging compliance with technical regulations. In the first instance, the ACMA usually advises the alleged offender of the breach and of the steps needed to comply with the relevant requirements. A warning may also be issued.

If this action is unsuccessful, for certain breaches of the Telecommunications Act the ACMA can escalate regulatory action by issuing the alleged offender with a telecommunications infringement notice. An infringement notice sets out the nature of the offence, the penalty amount payable and the maximum penalty a court could impose for the offence. Where the alleged offender has a record of recurring or serious non-compliance, the ACMA may issue a notice.

Why did the ACMA introduce telecommunications infringement notices?

The ACMA can now issue infringement notices in lieu of prosecution for certain offences under the Telecommunications Act, which is a simpler and cheaper option than if the matter were dealt with by a court. This aims to encourage increased compliance by enabling the ACMA to act more quickly to address non-compliance.

The issuing of infringement notices is less onerous with fewer costs for the ACMA and industry. Where an infringement notice is accepted, legal representation and court costs are avoided. Industry benefits by having the option of paying a fine rather than being prosecuted, where a criminal conviction may be recorded with the potential for significant harm to business and personal reputations. The associated penalties are much lower than the maximum penalty a court could impose for the offence.

What is a telecommunications infringement notice?

Authorised ACMA officers can issue a telecommunications infringement notice with an associated monetary penalty to an individual or body corporate that has committed an offence against the

provisions mentioned in section 453A of the Telecommunications Act, in lieu of having the matter heard in a court.

An infringement notice must be sent within 10 months of the alleged offence occurring.

If a penalty is paid within 28 days after the notice is served, the matter is disposed of without an admission of guilt or a conviction.

What offences can be addressed by a telecommunications infringement notice?

The offences that may be addressed by a telecommunications infringement notice include:

- connection of unauthorised customer equipment to a telecommunications network or installation of unauthorised cabling products;
- labelling of telecommunications customer equipment or customer cabling with the A-tick mark without satisfying the relevant standards or documentation requirements;
- unauthorised use of protected symbols;
- supply of unlabelled or incorrectly labelled telecommunications customer equipment;
- performance of unauthorised telecommunications customer cabling work;
- breaching the Telecommunications Cabling Provider Rules 2000; and
- contravening cabling licence conditions.

How much is the penalty?

The amount payable in connection with a telecommunications infringement notice varies depending on the offence. The amount, set out in the Telecommunications Act, is linked to penalty units under the *Crimes Act 1914* and is generally much lower than the maximum penalties which may be imposed through the court system following conviction. Currently one penalty unit equates to \$110.

Example 1

If an individual performs unauthorised cabling work, a telecommunications infringement notice would impose 12 penalty units (\$1,320) for each offence. In contrast, the maximum penalty a court may impose on

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conviction of the offence is 120 penalty units (\$13,200).

Example 2

If an individual supplies unlabelled customer equipment that is required to be labelled (and which is not covered by an approved alternative labelling notice arrangement), a telecommunications infringement notice would impose 12 penalty units (\$1,320) for each offence. A body corporate would have 60 penalty units (\$6,600) imposed for each offence. The maximum penalty a court may impose on conviction of the offence is 100 penalty units (\$11,000).

What if I don't believe I have committed an offence?

If you don't believe you have committed an offence, you can provide a statement in writing within the 28-day period, outlining the reasons you believe demonstrate that you have not committed an offence. You should also include any material you believe ought to be taken into account in the ACMA's consideration of the alleged offence.

This additional material will be considered and the 28-day payment period extended, if necessary, to allow for the decision-making process. You will receive written notification about the decision, which may be to:

- withdraw the telecommunications infringement notice; or
- not withdraw the telecommunications infringement notice.

If the decision is made to not withdraw the telecommunications infringement notice, reasons will be provided. The penalty has to be paid at the end of seven days after receiving notice of the refusal, or at the end of the original 28-day period, whichever is later.

In considering whether or not to withdraw a telecommunications infringement notice, the following factors are taken into account:

- the material provided by the individual;

- the circumstances in which the offence mentioned in the telecommunications infringement notice is alleged to have been committed;
- whether the person has been convicted previously of an offence against the Telecommunications Act;
- whether a telecommunications infringement notice has previously been given to the person for an offence of the same kind as the offence mentioned in the notice; and
- any other matter the authorised person considers relevant to the decision.

What if I can't pay within 28 days?

Recipients of a telecommunications infringement notice may apply in writing for a further 14-day payment extension. If the extension is denied, the penalty has to be paid at the end of seven days after receiving notice of the refusal, or at the end of the original 28-day period, whichever is later.

What if I don't pay the penalty?

If you do not pay the penalty within the prescribed timeframe, the ACMA may commence prosecution action, in which case the matter will be dealt with in a court.

More information

For more information about telecommunications infringement notices, see the [ACMA website](#) or contact the ACMA on 1300 850 115.

Please note: this document is intended as a guide only and should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases.

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