Automatic sunsetting of
legislative instruments:
Proposal to remake the Telecommunications (Infringement Notices) Guidelines 2011

Consultation paper

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# Executive summary

Part 31B of the *Telecommunications Act 1997* establishes a scheme under which authorised officers of the Australian Communications and Media Authority (ACMA) may issue infringement notices for contraventions of civil penalty provisions under the Telecommunications Act, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and the *Telecommunications (Interception and Access) Act 1979*.

The infringement notice scheme is intended to provide a more efficient way to deal with contraventions of certain civil penalty provisions instead of civil penalty court proceedings.

Subsection 572M(3) of the Telecommunications Act provides that an authorised infringement notice officer must not issue an infringement notice unless guidelines are in force under subsection 572M(2).

We are consulting on the proposed remaking of the Telecommunications (Infringement Notices) Guidelines 2011, made under subsection 572M(2) of the Telecommunications Act.

# Background

Under Part 4 of Chapter 3 of the *Legislation Act 2003*, most legislative instruments ‘sunset’ (that is, they are automatically repealed) on 1 April or 1 October that first occurs 10 years after they are registered. This is an automatic process applying to most legislative instruments regardless of their particular content.

Among the legislative instruments made by the ACMA, which are due to sunset in the near future, is the following instrument, due to sunset on the following date:

|  |  |
| --- | --- |
| **Name of instrument** | **Sunset date** |
| Telecommunications (Infringement Notices) Guidelines 2011  | 1 April 2022 |

We have formed the preliminary view that this instrument is operating effectively and efficiently and, as such, continues to form a necessary and useful part of the legislative framework. Accordingly, we propose to remake it in a new instrument before the sunset date referred to above, without any significant changes, so that its ongoing effect is preserved.

We propose to remake the instrument with only such minor and technical changes as are described in this paper.

# Overview of the infringement notice guidelines

The Telecommunications (Infringement Notices) Guidelines 2011 (the guidelines) were made by the ACMA under subsection 572M(2) of the Telecommunications Act on 10 November 2011.

Section 572M of the Act requires the ACMA to formulate guidelines that an authorised infringement notice officer must consider in exercising infringement notices powers under Part 31B.

The guidelines are formulated for the purpose of subsection 572M(3) of the Telecommunications Act, which provides that an authorised infringement notice officer must not give an infringement notice to a person unless guidelines are in force under subsection (2).

The guidelines are intended to assist both the telecommunications industry and the community to understand the ACMA’s approach to its infringement notice powers under the Telecommunications Act. If it is necessary for the ACMA to use its enforcement powers, it will do so in a manner that considers the administrative and financial burdens on the telecommunications industry and the effectiveness of the regulatory arrangements.

The guidelines outline matters the ACMA will take into consideration when deciding on an enforcement action under the general headings of:

exercising enforcement powers

infringement notice powers under Part 31B of the Telecommunications Act

content of an infringement notice

request for an extension of time to pay the penalty

withdrawal of an infringement notice

effect of withdrawal of an infringement notice

publication.

The guidelines necessarily deal with a variety of factual scenarios and so are framed to give broad guidance without unduly restricting the ACMA’s capacity to take appropriate action tailored to the facts and circumstances of each particular case.

# Proposed changes to the legislative instrument

We consider that the guidelines have served their purpose satisfactorily and should be remade with only minor and technical amendments.

Examples of minor and technical amendments proposed to be made to the guidelines, include:

inserting new standard clauses dealing with:

the authority to make the instrument (new clause 3)

repeal of the existing instrument (new clause 4)

the meaning of expressions used in the instrument (new subclause clause 5.2)

references to other legislative instruments (new clause 6)

making stylistic, typographical or grammatical amendments

updating a reference to another legislative instrument

omitting redundant words and subheadings.

The draft Telecommunications (Infringement Notices) Guidelines 2022, with proposed changes highlighted, is available alongside this paper on the [ACMA website](https://www.acma.gov.au/have-your-say).

# Issues for comment

### Question 1

Are the guidelines operating effectively and efficiently?

### Question 2

Should the guidelines be amended as proposed?

### Question 3

Are there any other changes that should be made to the guidelines?

# Invitation to comment

## Making a submission

Comments are sought on the ACMA’s proposal to remake the Telecommunications (Infringement Notices) Guidelines 2011, without any significant changes, on the basis that they are operating effectively and efficiently.

[Online submissions](https://www.acma.gov.au/have-your-say) can be made by uploading a document. Submissions in PDF, Microsoft Word or Rich Text Format are preferred.

Submissions by post can be sent to:

Legal Services Division

Australian Communications and Media Authority

PO Box 78

Belconnen ACT 2616

The closing date for submissions is COB, **Friday** **24 December 2021**

Consultation enquiries can be emailed to haveyoursay@acma.gov.au

#### Publication of submissions

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