
Submission

16th December 2022

Universal Services Branch
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 594
Canberra ACT 2601

Re: Draft Telecommunications (Infringement Notice Penalties) Determination 2022

ACCAN thanks the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) for the opportunity to provide feedback on the draft Telecommunications (Infringement Notice Penalties) Determination 2022 (Determination).

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

The Infringement Notice (IN) scheme constitutes a vital part of the Australian Communications and Media Authority's (ACMA's) enforcement regime. We consider that the remaking of the Determination provides a timely opportunity to examine the appropriateness of penalties applicable for breaches of consumer protections. The power of the ACMA to issue INs for non-compliance is supported by the Determination, which details the applicable penalties. Noting the critical role of INs in facilitating compliance, we support:

- The remaking Telecommunications (Infringement Notice Penalties) Determination 2012;
- The Department undertaking a review of graduated penalty amounts and benchmark penalties to ensure that they reflect community expectations and provide efficient incentives for compliance; and
- The Department committing to periodic reviews of all IN penalty amounts to facilitate compliance going forward.

Remaking the Telecommunications (Infringement Notice Penalties) Determination

ACCAN strongly supports remaking the Determination to support an IN scheme that reflects the recognition of telecommunications as an essential service.¹ Across Australia, landlines and payphones remain vital communication services for many communities. For people in rural and remote communities, those with medical conditions requiring landlines and priority assistance, and older people, the penalties set by the Determination underpin the services that they receive.

Noting recent and historical breaches of consumer protection obligations,² ACCAN remains of the view that remaking the Determination and maintaining existing penalties is the minimum required

¹ ACCAN, 2022, *Consumer Check-in: Expectations in 2022 – Reliability and Fairness Snapshot*. Available at: www.accan.org.au/accans-work/research/2003-consumer-expectations-2022.

² Australian Communications and Media Authority (ACMA), (2022, 27 May), *Delayed \$11m compensation for Telstra customers after late landline phone connections and repairs*. <https://www.acma.gov.au/articles/2022-05/delayed-11m-compensation-telstra-customers-after-late-landline-phone-connections-and-repairs>. Press release.

to facilitate compliance.³ The Determination continues to have an important role in providing incentives for carriage service providers to comply with consumer protection obligations. Accordingly, ACCAN strongly supports the remaking of the Determination. In the event that the Determination is not remade, we note that the applicable penalties for non-compliance for many regulatory standards would fall to a nominal amount.⁴ Noting ongoing issues concerning non-compliance we hold significant concerns that a reduction in penalties would not facilitate compliance and lead to a material decline in service outcomes for consumers.

Reviewing graduated penalty amounts

ACCAN supports a proportionate and graduated penalty framework. Graduated penalties are important for regulators as they allow them to tailor their enforcement response when carriage service providers fail to meet set performance benchmarks. The imposition of targeted and proportionate penalties is critical to shaping industry incentives, behaviour and encouraging compliance with standards in the first instance.

ACCAN recommends the Department undertake a review of all penalty amounts to ensure that the INs promote compliance and remain fit for purpose. The draft Determination provides a useful starting point for the Department to undertake a more detailed review of all INs and whether the corresponding penalty units are promoting compliance.⁵

As part of this review, we recommend that penalties for infringements of communications consumer protection rules be benchmarked against comparable sectors. We do not consider that the applicable penalties for non-compliance in the communications sector should be lesser than those that would apply in other essential service contexts such as energy.

Periodic review of IN penalty amounts

Finally, ACCAN recommends that the Department undertake periodic reviews of the penalty units set out in the Determination to ensure the scheme promotes efficient compliance and remains fit for purpose. This recommendation aligns with ACCAN's submission on the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2011*, which noted the importance of regularly updating and reviewing provisions to ensure compliance.⁶

We thank the Department for the opportunity to comment on the Determination. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at

Yours sincerely,

Dr Amelia Radke
Senior Policy Adviser

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.

³ Consumer Action Law Centre, (2022, 24 November), *ACMA Telstra direction reveals weak and worrying gaps in its powers to regulate telecommunications*. <https://consumeraction.org.au/acma-telstra-direction-reveals-weak-and-worrying-gaps-in-its-powers-to-regulate-telecommunications/>. Press release.

⁴ The default penalty units for an IN issued by the ACMA to a body corporate is 60 penalty units (or \$13,320). See: Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 2022, *Consultation on draft Telecommunications (Infringement Notice Penalties) Determination 2022*. Available at: <https://www.infrastructure.gov.au/have-your-say/consultation-draft-telecommunications-infringement-notice-penalties-determination-2022>.

⁵ *Crimes Act 1914* (Cth) s 4AA(1A) provides that one penalty unit is equal to \$222. See: Draft Explanatory Statement, *Telecommunications (Infringement Notice Penalties) Determination 2022* (Cth) 2, p 3.

⁶ ACCAN, 2022, *ACCAN submission to Telecommunications (Listed Infringement Notice Provisions) Declaration 2011*. Australian Communications and Media Authority. Available at: <https://accan.org.au/accans-work/submissions/1954-linp-declaration>. p 3-4.