



# Infringement notices

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An infringement notice is like a fine. We may issue an infringement notice to a person or entity who breaches the *Fair Work (Registered Organisations) Act 2009* (RO Act) or its regulations.

An infringement notice may be issued:

- within 12 months of the contravention and
- when an infringement officer believes on reasonable grounds that a person has breached a section of the RO Act which can be the subject of an infringement notice

## Issuing infringement notices

Our [Compliance and Enforcement Policy](#) outlines our approach to compliance. Infringement notices may be issued by the General Manager of the Fair Work Commission or an infringement officer in relation to a breach of a strict liability offence or a civil penalty provision of the RO Act. A strict liability offence is an offence that does not involve an element of fault by the person who has contravened the provision (such as proof of intention, knowledge or recklessness).

We are unlikely to issue an infringement notice in circumstances where the alleged conduct:

- has been prolonged, systematic, complex or involves serious non-compliance
- is more appropriately dealt with by an inquiry, investigation or enforceable undertaking
- should be referred to another regulatory agency such as the Australian Federal Police (AFP).

The provisions that may be subject to an infringement notice are identified in section 316A(1) of the RO Act and regulation 176AA of the *Fair Work (Registered Organisations) Regulations 2009*.



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## Penalties

The penalty amount in an infringement notice is significantly lower than the maximum penalty a court could impose.

The penalties which may be specified in an infringement notice are prescribed and will usually be:

- a. one-fifth of the maximum penalty that a court could impose on the person for each contravention,
- b. capped at a maximum 12 penalty units per contravention for an individual or 60 penalty units per contravention for a body corporate.



### Infringement notices or litigation

NYO organisation sent its members a copy of the financial report that was not audited. This means they did not provide the full report to members before their AGM as required by section 265 of the RO Act.

The General Manager decides to issue an infringement notice to NYO.

If this matter went to litigation, NYO would probably need to seek legal advice, attend court, present arguments, and ultimately they could receive a penalty of up to **500 penalty units**. This could also take many months to resolve.

NYO decides to pay an infringement notice of **60 penalty units** to settle this noncompliance. NYO now cannot be taken to court for this issue and they are also going to work with the regulator to ensure next year's report follows a better process.

Where multiple contraventions have been alleged the amount specified in the infringement notice will be the capped amount that relates to a single contravention multiplied by the number of alleged contraventions.

## Responding to an infringement notice

The infringement notice will include:

- the nature of the alleged non-compliance
- the maximum penalty that a court could impose for each contravention referred to in the notice



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- the amount that is payable under the notice and how it can be paid
- the due date (28 days).

Paying the infringement notice does not amount to an admission of guilt or liability but will avoid the person or entity having to respond to a possible court action in relation to the non-compliant behaviour stated in the notice. If a recipient decides to pay, they should ensure that the payment is made by the due date set out in the notice.

## Extensions of time

The recipient of an infringement notice may apply to the General Manager for an extension of time to pay. The General Manager may, in writing, extend that period.

The application must be:

- in writing
- made before the due date for payment.

## Withdrawing an infringement notice

The recipient can ask the General Manager to withdraw the notice. A request must be in writing. The General Manager may also independently withdraw the infringement notice.

The contents of the infringement notice will set out how the notice can be withdrawn.

If an infringement notice is withdrawn, we will consider whether further action is appropriate. That action could include the bringing of court proceedings.

## Refusal to pay

Infringement notices are a way of resolving our concerns about non-compliance and avoiding legal proceedings.

Non-payment of infringement notice penalties will expose the recipient to the risk of litigation. Legal proceedings can be costly, time consuming, and create reputational risk as well as the possibility of significant financial penalties.



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## Relevant legislation

Infringement notices are governed by a framework of legislation including:

- the RO Act
- the *Fair Work (Registered Organisations) Regulations 2009*
- Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*.

The provisions which may be subject to an infringement notice are those listed at section 316A(1) of the RO Act and Regulation 176AA of the Regulations.

## Further information

If you require further assistance regarding the information in this guidance note please contact the Registered Organisations Services Branch of the Fair Work Commission at [regorgs@fwc.gov.au](mailto:regorgs@fwc.gov.au) or call us on 1300 341 665.

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This guidance note is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.