



National Consumer Credit Protection (Infringement Notices) Regulations 2009¹

Select Legislative Instrument 2009 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *National Consumer Credit Protection Act 2009*.

Dated 2009

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]

Treasurer

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Chapter INF Infringement notices

INF.1 Purpose of Part

- (1) The purpose of this Part is to set out a scheme under which:
 - (a) a person who is alleged to have committed an offence against the Act that is stated to be an offence of strict liability may pay a penalty to the Commonwealth as an alternative to prosecution; and
 - (b) a person who is alleged to have contravened a civil penalty provision may pay a penalty to the Commonwealth as an alternative to civil proceedings.
- (2) This Part does not require an infringement notice to be given to a person for the alleged commission of an offence or contravention of a civil penalty provision.
- (3) This Part does not affect the liability of a person to prosecution for the commission of an alleged offence or contravention of a civil penalty provision if an infringement notice is not given to the person.
- (4) This Part does not affect the liability of a person to prosecution for the commission of an alleged offence or contravention of a civil penalty provision if:
 - (a) an infringement notice is given to the person; and
 - (b) the person does not pay the penalty stated in the notice in accordance with regulation INF..
- (5) This Part does not limit or otherwise affect:
 - (a) the penalty that a court could impose on the person for the offence; or
 - (b) the penalty that a court could impose on the person for contravention of the civil penalty provision.

INF.2 Definitions for Part

In this Part:

authorised officer means a member of the staff of ASIC mentioned in section 120 or 122 of the *Australian Securities and Investments Commission Act 2001*.

infringement notice means an infringement notice under regulation INF.3.

infringement notice offence means:

- (a) an offence against the Act that is stated to be an offence of strict liability; or
- (b) a contravention of a civil penalty provision.

nominated person, in relation to an infringement notice, means the person specified in the notice as the nominated person.

Note The nominated person is responsible for the administration of the infringement notice for the purposes of the payment of a penalty and the withdrawal of the notice.

recipient, in relation to an infringement notice, means the person to whom the notice is given under subregulation INF.3 (1).

INF.3 When an infringement notice can be given

Alleged commission of offence against the Act

- (1) If an authorised officer has reasonable grounds to believe that a person has committed an offence against the Act that is stated to be an offence of strict liability, the authorised officer may give to the person an infringement notice relating to the alleged commission of the offence.
- (2) The infringement notice must be given within 12 months after the day on which the offence is alleged to have been committed.
- (3) If an infringement notice given to a person in relation to the alleged commission of a particular offence is withdrawn, an authorised officer may give the person a new infringement notice in relation to the alleged commission.

Example for subregulation (3)

An infringement notice given to a person in relation to the alleged commission of a particular offence may be withdrawn, and a new infringement notice given to the person in relation to that alleged commission, if the original infringement notice contained an error.

Alleged contravention of civil penalty provision

- (4) If an authorised officer has reasonable grounds to believe that a person has contravened a civil penalty provision, the authorised officer may give to the person an infringement notice relating to the alleged contravention.
- (5) The infringement notice must be given within 12 months after the civil penalty provision is alleged to have been contravened.
- (6) If an infringement notice given to a person in relation to the alleged contravention of a particular civil penalty provision is withdrawn, an authorised officer may give the person a new infringement notice in relation to the alleged contravention.

Example for subregulation (6)

An infringement notice given to a person in relation to the alleged contravention of a particular civil penalty provision may be withdrawn, and a new infringement notice given to the person in relation to that alleged contravention, if the original infringement notice contained an error.

INF.4 Contents of infringement notice

An infringement notice:

- (a) must be in accordance with the form set out in Schedule **INF**; and
- (b) may contain any other information that the authorised officer who gives it considers necessary.

INF.5 Amount of penalty if infringement notice given

The penalty payable under an infringement notice for an alleged infringement notice offence is:

- (a) for an individual — **[TBA]** penalty units; and
- (b) for a body corporate — **[TBA]** penalty units.

Note Under section INF5 of the Act:

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- (a) the penalty for an offence against the Act that is stated to be an offence of strict liability must not exceed [*one-fifth*] of the maximum penalty that a court could impose on the person for that offence; and
 - (b) the penalty for a contravention of a civil penalty provision must not exceed [*one-tenth*] of the maximum penalty that a court could impose on the person for contravention of that provision.

INF.6 Extension of time to pay penalty

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for a further period of up to 28 days in which to pay the penalty stated in the notice.
- (2) The application must:
 - (a) specify the infringement notice's unique identification code; and
 - (b) set out the reasons for the application.
- (3) Within 14 days after receiving the application, the nominated person must:
 - (a) grant or refuse a further period not longer than the period sought (but less than 28 days); and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

INF.7 Payment of penalty by instalments

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for permission to pay the amount of the infringement notice penalty by instalments.
- (2) The application must:
 - (a) specify the infringement notice's unique identification code; and
 - (b) set out the reasons for the application; and
 - (c) specify the amount and frequency of the instalments that the recipient proposes to pay.
- (3) Within 14 days after receiving the application, the nominated person must:

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- (a) grant or refuse to grant permission for payment by instalments; and
 - (b) give the recipient written notice of the decision, including:
 - (i) if permission is granted — the amount and frequency of the instalments); and
 - (ii) if permission is refused — the reasons for refusal.

INF.8 Time for payment of penalty

- (1) The penalty stated in an infringement notice must be paid within:
 - (a) 28 days after the day on which the notice is given to the recipient; or
 - (b) another period required by this regulation.
- (2) If the recipient applies for a further period of time in which to pay the penalty, and the application is granted, the penalty must be paid within the further period allowed.
- (3) If the recipient applies for a further period of time in which to pay the penalty, and the application is refused, the penalty must be paid within 7 days after the notice of the refusal is given to the recipient.
- (4) If the recipient applies for permission to pay the penalty by instalments, and permission is granted, the penalty must be paid in accordance with the permission.
- (5) If the recipient applies for permission to pay the penalty by instalments, and permission is refused, the penalty must be paid within 7 days after the notice of the refusal is given to the recipient.
- (6) If the recipient applies for the notice to be withdrawn, and the application is refused, the penalty must be paid within 28 days after the notice of the refusal is given to the recipient.

INF.9 Effect of payment of penalty

Alleged commission of offence against the Act

- (1) If:

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- (a) an infringement notice is given in relation to an alleged commission of an offence against the Act that is stated to be an offence of strict liability; and
 - (b) the infringement notice is not withdrawn; and
 - (c) the recipient pays the penalty stated in the notice in accordance with regulation INF.;
- the consequences mentioned in subregulation (2) apply.

- (2) The effects are:
 - (a) any liability of the recipient for the alleged offence is discharged; and
 - (b) no prosecution may be brought against the recipient for the alleged offence; and
 - (c) the recipient is not taken to have admitted guilt in respect of the alleged offence; and
 - (d) the recipient is not taken to have been convicted of the offence.

Alleged contravention of civil penalty provision

- (3) If:
 - (a) an infringement notice is given in relation to an alleged contravention of civil penalty provision; and
 - (b) the infringement notice is not withdrawn; and
 - (c) the recipient pays the penalty stated in the notice in accordance with regulation INF.;

the consequences mentioned in subregulation (4) apply.
- (4) The effects are:
 - (a) any liability of the recipient for the alleged contravention is discharged; and
 - (b) no civil proceedings may be brought against the recipient for the alleged contravention; and
 - (c) the recipient is not taken to have admitted guilt in respect of the alleged contravention; and
 - (d) the recipient is not taken to have been found guilty of the contravention.

INF.10 Withdrawal of infringement notice by nominated person

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for the infringement notice to be withdrawn.
- (2) The application must:
 - (a) specify the infringement notice's unique identification code; and
 - (b) set out the reasons for the application.
- (3) Within 14 days after receiving the application, the nominated person must:
 - (a) withdraw or refuse to withdraw the notice; and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.
- (4) Without limiting subregulation (3), the nominated person may withdraw the infringement notice after taking into account the following matters:
 - (a) whether the recipient:
 - (i) has been previously convicted of an offence against the Act; or
 - (ii) has been previously found to have contravened a civil penalty provision;
 - (b) the circumstances in which the commission or contravention set out in the infringement notice offence specified in the notice is alleged to have occurred;
 - (c) whether an infringement notice has previously been given to the recipient in relation to an infringement notice offence of the same kind as the offence specified in the notice, and in relation to which the recipient paid the penalty under the notice;
 - (d) any other relevant matter.
- (5) If the nominated person has not withdrawn, or refused to withdraw, the notice within 14 days after receiving the application, the nominated person is taken to have refused to withdraw the notice.

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- (6) Application may be made to the Administrative Appeals Tribunal for review of a decision of the nominated person to refuse to withdraw an infringement notice.

Note Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must give to any person whose interests are affected by the decision notice, in writing or otherwise, of the making of the decision and the person's right to have the decision reviewed.

INF.11 Withdrawal of infringement notice by authorised officer

- (1) An authorised officer may withdraw an infringement notice given by him or her without an application under regulation INF.10 having been made.
- (2) Without limiting subregulation (1), the authorised officer may withdraw the infringement notice after taking into account a matter mentioned in paragraph INF.10 (4) (a), (b), (c) or (d).

INF.12 Notice of withdrawal of infringement notices

- (1) A notice withdrawing an infringement notice must include the following information:
- (a) the full name, or surname and initials, and address of the recipient;
 - (b) the date the infringement notice was given;
 - (c) the infringement notice's unique identification code.
- (2) The notice must also state that the notice is withdrawn.

INF.13 Refund of penalty

If an infringement notice is withdrawn after the penalty stated in it has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

Schedule INF. Form of infringement notice

(regulation INF.4)

COMMONWEALTH OF AUSTRALIA

National Consumer Credit Protection Regulations 2009

INFRINGEMENT NOTICE

Date of issue:

Unique identification code:

TO [*name and address of recipient*]:

1. I, [*name of authorised officer giving the infringement notice*], give this infringement notice under regulation INF. of the *National Consumer Credit Protection Regulations 2009*.

*2. I have reasonable grounds to believe that you have committed the following offence:

[Details of alleged offence, including the provision of the Act that creates the offence, the nature of the offence, the time and date of the alleged offence, and the place of the alleged offence.]

*2. I have reasonable grounds to believe that you have contravened the following civil penalty provision:

[Details of alleged contravention, including the provision of the Act, the nature of the contravention, the time and date of the alleged contravention, and the place of the alleged contravention.]

* *Omit if not applicable*

Penalty under this notice

3. The penalty for the alleged offence under this notice is **[TBA]** penalty units for an individual or **[TBA]** penalty units for a body corporate.

This penalty can be paid by [methods of payment].

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- *4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
- (a) any liability you have for the commission of the alleged offence will be discharged; and
 - (b) you will not be prosecuted for the alleged offence; and
 - (c) you will not be taken to have admitted guilt in respect of the alleged offence; and
 - (d) you will not be taken to have been convicted of the alleged offence.
- *4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
- (a) any liability you have for the alleged contravention of the provision will be discharged; and
 - (b) no civil proceedings will be brought against you for the alleged contravention; and
 - (c) you will not be taken to have admitted guilt in respect of the alleged contravention; and
 - (d) you will not be taken to have been found guilty of the alleged contravention.

* *Omit if not applicable*

Consequences of failure to pay penalty under this notice

- *5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, you may be prosecuted for the alleged offence.
- *5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, you may be prosecuted for the alleged contravention.

* *Omit if not applicable*

6. The maximum penalty that a court may impose for this offence is [insert] penalty units for an individual and [insert] penalty units for a body corporate.

Time for payment

7. The time for payment is:
- (a) within 28 days after the date of this notice; or
 - (b) if you apply for a further period of time in which to pay the penalty, and the application is granted — within the further period allowed; or
 - (c) if you apply for a further period of time in which to pay the penalty, and the application is refused — within 7 days after the date you receive the notice of refusal; or
 - (d) if you apply for permission to pay the penalty by instalments, and that permission is granted — in accordance with the permission; or
 - (e) if you apply for permission to pay the penalty by instalments, and that permission is refused — within 7 days after the date you receive the notice of refusal; or
 - (f) if you apply for the notice to be withdrawn, and the application is refused — within 28 days after the date you receive the notice of refusal.

Further penalty for continuing offence

- *8. If the commission of the alleged offence continues beyond [*date of alleged offence*], a further penalty may be imposed even if the penalty imposed by this notice is paid.
- *8. If the alleged contravention of the civil penalty provision continues beyond [*date of alleged offence*], a further penalty may be imposed even if the penalty imposed by this notice is paid.
- * *Omit if not applicable*

Applying to have this notice withdrawn

9. Within 28 days after you receive this notice, you may apply to [*name and/or position title*] to have this notice withdrawn.
- The person is the ***nominated person*** for this notice.

Applying for more time to pay the penalty under this notice

10. Within 28 days after you receive this notice, you may apply to the nominated person for a further period of up to 28 days in which to pay the penalty under this notice.

Applying to pay the penalty under this notice by instalments

11. Within 28 days after you receive this notice, you may apply to the nominated person for permission to pay the penalty under this notice by instalments.

Requirements for applications

12. An application to have this notice withdrawn, or for more time to pay the penalty under this notice, or for permission to pay the penalty under this notice by instalments:
 - (a) must be in writing; and
 - (b) must include the unique identification code set out at the top of this notice; and
 - (c) must include your reasons for making the application; and
 - (d) for an application for permission to pay the penalty under this notice by instalments — include the proposed amount and frequency of instalments; and
 - (e) may be made by [*methods of making application*].

Signature of authorised officer issuing the notice

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.

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