

# ACMA compliance and enforcement policy

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# Contents

Introduction	1
Strategic context	1
Compliance and enforcement approach	2
Compliance and enforcement responses	3
1. Encouraging voluntary compliance	4
2. Informal resolution	4
3. Administrative action	4
4. Civil and criminal action	5
Further information	5



## Introduction

The Australian Communications and Media Authority (the ACMA) is Australia's regulator for broadcasting, the internet, radiocommunications and telecommunications.

The Australian media and communications landscape is diverse and complex. It covers:

- > more than 270 commercial radio and 50 commercial television licences, more than 300 community radio and 80 community television licences,<sup>1</sup> more than 2,500 subscription television licences<sup>2</sup> and two national radio and television broadcasters
- > more than 155,000 holders of licences to use radiocommunications spectrum for a variety of purposes (including aeronautical, aviation and maritime)
- > more than 170 licensed telecommunications carriers and more than 600 internet service providers (ISPs).<sup>3</sup>

Across these sectors, a range of obligations are placed on industry to ensure that the interests of citizens are met, consumers are protected and industry growth is encouraged.

This compliance and enforcement policy sets out the ACMA's broad approach to compliance and enforcement across these diverse sectors.

The ACMA carries out compliance and enforcement activities under the provisions of the *Broadcasting Services Act 1992*, the *Radiocommunications Act 1992*, the *Telecommunications Act 1997*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the *Spam Act 2003*, the *Do Not Call Register Act 2006*, the *Interactive Gambling Act 2001* and related legislative and other instruments. The ACMA also considers complaints about matters that are included in industry codes of practice registered by the ACMA.

This policy document must be read in the context of those Acts and instruments, in particular, the objects and regulatory policy of those Acts. For example, legislation covering broadcasting and telecommunications emphasises the use of co-regulatory approaches (predominantly through industry codes of practice) in addressing issues for consumers and citizens in the first instance. In these areas, the ACMA may need to take quite different approaches to regulating than in areas where obligations are included in legislation or delegated legislation.

This policy is intended to provide additional guidance to stakeholders about the approach that the ACMA takes to its compliance and enforcement activities. The ACMA carries out its functions in accordance with statutory requirements and this policy cannot override those requirements. Nothing in this document should be taken to bind the ACMA or the government to any particular course of action.

## Strategic context

The ACMA's strategic intent is to make communications and media work in Australia's public interest, and this is achieved by delivering constructive regulatory outcomes that effectively balance the needs of the industry and the community.

The *ACMA Compliance and Enforcement Policy* forms part of a suite of strategic documents that describe how the ACMA approaches its work. This policy should be

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<sup>1</sup> Relates mostly to Indigenous television services.

<sup>2</sup> Each subscription service is licensed separately.

<sup>3</sup> ISPs with more than 1,000 subscribers.

considered in the context of other strategic documents published by the ACMA, including the ACMA Corporate Plan and the Annual Operating Plan (see page 5). These plans are updated annually and provide guidance about the ACMA's overarching regulatory approach and priorities for each year.

In addition, the ACMA publishes an annual Regulatory Plan, which provides business and the community with ready access to information about past and planned changes to Commonwealth regulation within the ACMA's remit.

## **Compliance and enforcement approach**

The ACMA adopts a graduated and strategic risk-based approach to compliance and enforcement. This approach recognises that breaches of the rules established by the Acts and instruments will be dealt with effectively and efficiently. It also recognises the role of co-regulation set out in the legislation it administers and of engaging with the regulated community to promote voluntary compliance.

The ACMA seeks to:

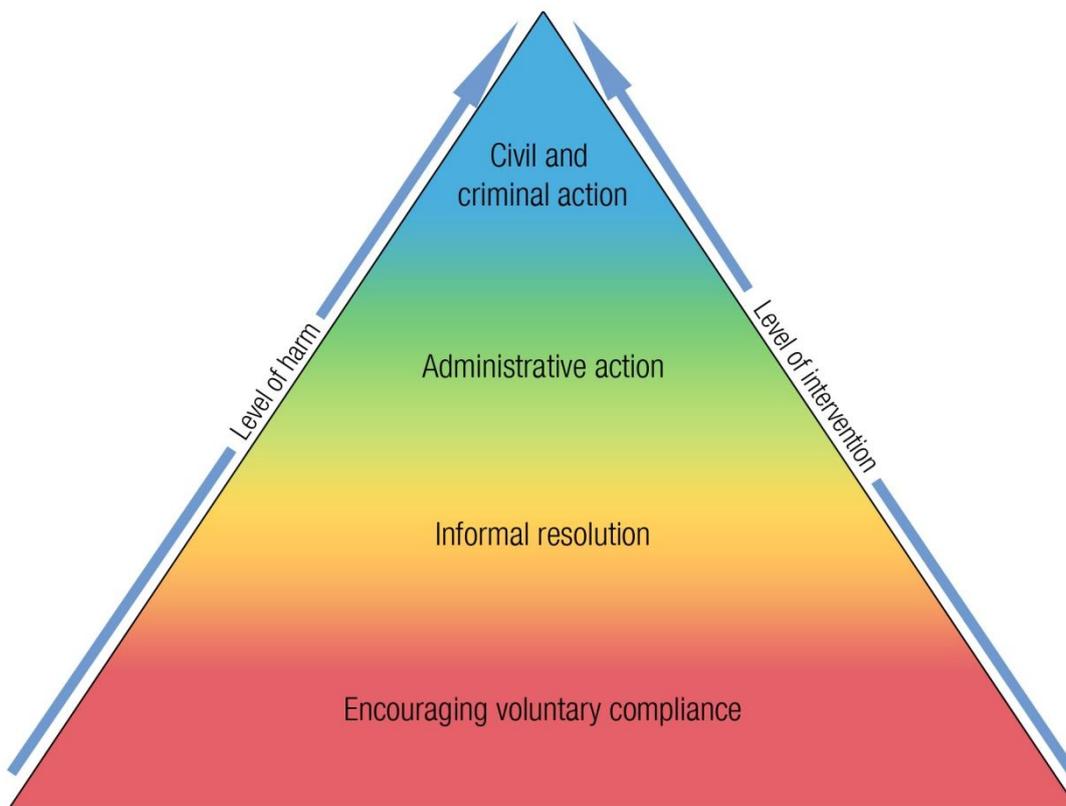
- > foster industry compliance with, and contribution to, the regulatory framework without imposing undue financial or administrative burdens
- > encourage a compliance culture within the communications and media sector and adherence to regulatory obligations
- > promote a communications and media sector that is respectful of community standards and diligent in responding to community complaints.

Where the ACMA is of the view that a regulatory breach has occurred, it will take regulatory action commensurate with the seriousness of the breach and the level of harm. The ACMA will generally use the minimum power or intervention necessary to achieve the desired result, which, in many cases, is compliance with the relevant obligation.

The ACMA takes into account all of the relevant facts to determine whether action should be taken, and if so, when and at what action level intervention should occur.

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Figure 1 'Compliance pyramid'—the ACMA's approach to compliance and enforcement



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## Compliance and enforcement responses

The 'compliance pyramid' at figure 1 demonstrates the range of compliance and enforcement responses the ACMA may use to ensure compliance with a regulatory obligation.

In deciding which compliance or enforcement option or combination of options to use, the ACMA takes into account a range of factors including:

- > the relevant regulatory objective
- > whether the conduct was deliberate, inadvertent or reckless
- > whether the conduct has caused, or may cause, detriment to another person, and the nature, seriousness and extent of that detriment
- > whether the conduct indicated systemic issues that may pose ongoing compliance or enforcement issues
- > whether the person has been the subject of prior compliance or enforcement action and the outcome of that action
- > the personal and general educative/deterrent effect of taking action
- > the seniority and level of experience of the person/s involved in the conduct
- > what, if any, action has been taken to remedy and address the consequences of the conduct
- > whether the subject of the investigation has cooperated with the ACMA

> whether the issues involved require urgent action/intervention by the ACMA.

### **1. Encouraging voluntary compliance**

The ACMA seeks to promote a compliance culture by educating and informing the regulated community to better understand the regulatory environment and to act in a manner that will minimise the need for intervention by the ACMA. Education and information also helps the community to understand its legal rights and be empowered to protect those rights by making informed decisions.

A significant amount of the ACMA's work is aimed at encouraging voluntary compliance. The ACMA's broad range of activities in this area include the publication of guidance documents and the use of formal and informal consultation mechanisms such as discussions, seminars, consultation papers and advisory committees. The ACMA may also publish the outcome of its investigations to explain its response to particular issues and thereby provide guidance on compliance to industry.

Where appropriate, the ACMA may publish guidance information to help the communications and media industry, consumers and citizens understand how the ACMA intends to apply the regulatory arrangements for communications to a specific service or technology.

Where appropriate, the ACMA encourages and assists self- and co-regulatory compliance initiatives by industry sectors. These initiatives range from industry-initiated self-regulatory codes of practice to co-regulatory codes developed and registered under legislation.

### **2. Informal resolution**

When the ACMA identifies possible non-compliance or minor issues of concern, it may alert the person/s involved and encourage them to address the issue/s. The ACMA may also accept a written commitment that action will be taken to rectify non-compliance.

In many matters, it will be appropriate and efficient for the ACMA to seek to resolve compliance issues through this more informal process rather than through recourse to formal action and intervention. However, if informal resolution is unsuccessful or inappropriate in the circumstances more formal action may be considered.

### **3. Administrative action**

Where the ACMA has identified non-compliance, it may be appropriate to take formal administrative action. There is a range of administrative actions the ACMA may take, including giving formal warnings, issuing an infringement notice, accepting an enforceable undertaking, giving a remedial direction (which may include requiring rectification strategies), imposing/varying licence conditions, suspending and cancelling licences, and withdrawing accreditation and authorisations.

In certain instances, the ACMA is empowered to issue a formal warning. A formal warning not only places a person on notice that the ACMA has identified issues of concern, thereby providing them with an opportunity to address those issues, but also warns them that stronger enforcement action may be taken if the non-compliance is not rectified or it recurs.

The ACMA may also be empowered to give an infringement notice for certain limited offences and contraventions. In issuing the notice, the ACMA is alleging that the relevant offence or contravention has occurred. If the recipient of the notice pays the specified penalty, their liability for the alleged contravention is discharged. In the event that the penalty is not paid, it will be the court's role to consider and determine, upon

the application of the ACMA, whether in fact the alleged offence or contravention has been established.

The ACMA may also resolve contraventions of relevant statutory instruments by accepting court-enforceable undertakings. An undertaking is a formal promise to act, or refrain from acting, in a particular manner. Enforceable undertakings provide an opportunity for the regulated entity to be involved in the resolution of a matter.

The ACMA is also empowered to issue remedial directions under certain statutory provisions. These are given in writing, and direct the person or entity to take specified action aimed at ensuring that the breach is remedied or that it is unlikely to recur in the future. There are significant consequences for an entity that does not comply with a remedial direction.

Another example of administrative action the ACMA may take is to direct a person or regulated entity to comply with an industry code if it is satisfied that they have contravened or are contravening the industry code. The failure to comply with such a direction may amount to an offence under the relevant legislation.

In sectors where parties operate under licences administered by the ACMA, the ACMA has the power to impose additional licence conditions, suspend a licence or, in the more serious matters, cancel a licence, where it is of the opinion that such action will lead to rectification of a contravention of the relevant Act or is in the public interest.

#### **4. Civil and criminal action**

The appropriate enforcement response may involve the ACMA commencing civil litigation or referring a matter to the Commonwealth Director of Public Prosecutions for prosecution of an offence.

For certain contraventions, the ACMA has the power to commence civil proceedings to obtain, among others, civil penalty orders, injunctive relief and orders to enforce an enforceable undertaking.

The laws administered by the ACMA also create a number of offences. The office of the Commonwealth Director of Public Prosecutions prosecutes these offences. The decision to refer a matter to the Commonwealth Director of Public Prosecutions for prosecution of an offence will be made by the ACMA in light of the facts and the Prosecution Policy of the Commonwealth.

### **Further information**

The ACMA produces a range of specific information on its compliance activities and approaches, including:

- > the ACMA [Corporate Plan 2010–2012](#)
- > the ACMA [Annual Operating Plan 2010](#)
- > the ACMA [annual regulatory plans](#)
- > regulatory guidance notes
- > [enforcement guidelines](#) issued by the ACMA under section 215 of the *Broadcasting Services Act 1992*.

This information is available at [www.acma.gov.au](http://www.acma.gov.au).