



INTRODUCING GRADUATED ENFORCEMENT MECHANISMS

Introduction

The Bill will introduce a simplified and streamlined set of compliance and enforcement powers for the Australian Communications and Media Authority (ACMA). These powers will enable the ACMA to take action that is commensurate with the seriousness of the breach of a user's licence conditions (such as deliberate interference) and the level of harm caused by such a breach, which may be inadvertent or accidental.

Issue

Under the current Act, the ACMA is reliant on criminal, rather than civil, sanctions, which require a higher evidentiary burden of proof to investigate and prosecute. This results in lengthy investigative processes that may cause delays in solutions for users. Further, the ACMA is limited in its administrative sanctions. For example, the ACMA is constrained to suspending or cancelling a licence in the event a user breaches their licence conditions, which may not actually solve the issue created by the breach.

This lack of graduated mechanisms may result in disproportionate enforcement for low-risk or inadvertent breaches.

Detail

The Bill will empower the ACMA to be able to choose from a range of formal enforcement actions, dependent on the harm caused, or risk of harm. This improved set of actions will better align the ACMA's enforcement capabilities with those of other Australian regulators and better allows for the ACMA to investigate and determine suitable outcomes for affected users.

Enforcement actions beyond civil and criminal sanctions may include:

- > public warning notices
- > issuing an infringement notice
- > accepting an enforceable undertaking
- > giving a remedial direction
- > imposing or varying licence conditions
- > suspending or cancelling licences, and
- > withdrawing accreditation and authorisations.

Penalty type	Number of provisions under the 1992 Act	Number of provisions proposed under the Bill
Criminal	11 (all with imprisonment sanctions)	9 (3 with imprisonment sanctions)
Strict liability	9	3
Civil	0	18
Infringement notices	15	25

The Bill reduces the number of criminal offences from 11 to 9. In the most serious of cases, the case may be referred for prosecution to the Commonwealth Director of Public Prosecutions. For certain breaches, the ACMA has the power to commence civil proceedings to obtain, among other remedies, civil penalty orders, injunctive

relief and using other measures such as enforceable undertakings.

The introduction of civil penalties, supported by criminal penalties for serious offences, will give more certainty to users that their rights and protections under a licence will be upheld.

A graduated approach to compliance and enforcement

