



## Compliance and Enforcement

# Compliance Notices

### What is a compliance notice?

An industrial inspector may issue a compliance notice to a person where they reasonably believe the person has contravened an 'entitlement provision' under the *Industrial Relations Act 1979*. In most cases, the person will be an employer.

A compliance notice requires the person to take specified action to correct the identified contravention, and to provide evidence that they have complied with the notice.

Examples of entitlement provision contraventions that may attract a compliance notice include where an employer fails to:

- pay an employee their correct wages or other entitlements under an award or industrial agreement;
- comply with the *Minimum Conditions of Employment Act 1993*, including minimum wages and leave conditions; or
- provide an employee with their correct long service leave entitlement under the *Long Service Leave Act 1958*.

### When can a compliance notice be issued?

Before issuing a compliance notice, an industrial inspector must reasonably believe that a contravention of an entitlement provision has occurred. For example, an inspector could form this belief after inspecting the employment records of an employer, or after investigating a complaint from an employee.

A compliance notice is an alternative to an industrial inspector taking enforcement proceedings in the Industrial Magistrates Court. Depending on the circumstances of the case, a compliance notice may be a more efficient and timely way of achieving compliance.

There are a number of factors that an industrial inspector will consider when deciding whether to issue a compliance notice, and if so, the actions that must be taken under the notice. These factors include:

- the seriousness of the contravention;
- the number of employees affected;
- whether the person to be issued with the notice has taken remedial action; and
- the person's past compliance history and attitude towards compliance.

## Complying with a compliance notice

If a compliance notice is issued to an employer, it will generally require them to:

- review calculations attached to the notice setting out the underpayment amount for each affected employee;
- rectify the underpayment amounts by making payment in full to employees;
- calculate and pay additional superannuation contributions on the underpayment amounts; and
- provide evidence to the industrial inspector that full payment has been made to employees, such as pay slips and bank transfer receipts.

The compliance notice will clearly identify what actions must be taken and a timeframe for complying with the notice.

Complying with a compliance notice is not an admission of a person having committed a contravention. Once a notice is complied with, an industrial inspector cannot take enforcement proceedings in relation to the alleged contravention.

## What happens if a person fails to comply?

If a person fails to comply with a compliance notice without reasonable excuse, proceedings may be taken in the Industrial Magistrates Court under section 83E of the *Industrial Relations Act 1979* for a civil penalty.

The maximum penalty that can be imposed by the Industrial Magistrates Court for not complying with a compliance notice is:

- \$30,000 for a body corporate; and
- \$6,000 for an individual.

Alternatively, an industrial inspector may decide to withdraw the compliance notice and take enforcement proceedings instead under section 83 of the *Industrial Relations Act 1979*.

The maximum penalty that can be imposed by the Industrial Magistrates Court under section 83 for each contravention is:

- \$65,000 for a body corporate (\$650,000 if the contravention is a serious contravention); and
- \$13,000 for an individual (\$130,000 if the contravention is a serious contravention).

### **Review of a compliance notice**

A person issued with a compliance notice may apply to the Industrial Magistrates Court for the notice to be reviewed on the basis that:

- they did not commit a contravention identified in the notice. The burden will be on them to prove this; or
- the notice does not comply with the requirements of section 84Q of the *Industrial Relations Act 1979*, which sets out the content requirements for a notice.

The Industrial Magistrates Court may confirm, cancel or vary the compliance notice after reviewing it.

### **Withdrawal of a compliance notice**

A compliance notice can be withdrawn at any time by an industrial inspector. For example, a notice could be withdrawn if the inspector decides that enforcement proceedings should be taken instead under section 83 of the *Industrial Relations Act 1979*.

A person issued with a compliance notice cannot request that it be withdrawn.

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