



Infringement Notices under the building services legislation

Infringement Notices under the *Building Act 2011*, *Building Services (Complaint Resolution and Administration) Act 2011*, *Building Services (Registration) Act 2011* and associated regulations.

The purpose of this note is to provide guidance on the issue of Infringement Notices for the purposes of the Criminal Procedure Act 2004 (CP Act) Part 2 by officers authorised by the Building Commissioner. The information contained in this note is general advice only and should not be relied upon as legal advice.

Infringement Notices are a means of expeditiously dealing with prescribed offences alleged to have occurred under the Building Services legislation, including:

- *Building Act 2011* (Building Act);
- Building Regulations 2012 (Building Regulations);
- *Building Services (Complaint Resolution and Administration) Act 2011* (BSCRA Act);
- *Building Services (Registration) Act 2011* (Registration Act); and
- Building Services (Registration) Regulations 2011 (Registration Regulations).

This process benefits both parties in that the Building Commissioner or local government can avoid costly prosecution actions, and the alleged offender can dispose of the matter quickly and conveniently.

Who may issue Infringement Notices?

There are only two classes of persons who may issue Infringement Notices:

1. Authorised officers appointed by the local government under the CP Act.
2. Authorised officer appointed by the Building Commissioner for the purposes of the CP Act.

An Authorised officer (local government) may only issue Infringement Notices for certain offences under the Building Act and Building Regulations (see further details below).

An Authorised officer (Building Commissioner) may only issue Infringement Notices for certain offences under the BSCRA Act, Registration Act and Registration Regulations (see further details below).

Authorised officers must have an Instrument/Certificate of Authority to issue Infringement Notices for the purposes of the CP Act Part 2, and must, upon request by alleged offender, produce that Instrument/Certificate.

What offences can Infringement Notices be issued for?

Building Act and Building Regulations – Authorised officer (local government)

Section/Regulation	Offence	Modified penalty	FER codes
s.33(1)	Failure to give notice of completion (BA7)	\$500	37456
s.34(3)	Failure to give notice of cessation	\$250	37457
s.42	Failure to display or bring attention to occupancy permit details	\$250	37458
s.76(1)	Encroachment beyond boundaries without consent, court order or other authority	\$2,500	37459
s.80(1)	Removal of fence, gate or other barrier to land without consent, court order or other authority	\$1,000	37460
s.80(3)	Failure to erect adequate temporary barrier	\$1,000	37461
r.50(1)	Failure to install barrier around private swimming pool	\$1,000	37462
r.56(1)	Failure to ensure smoke alarms compliant prior to transfer of dwelling	\$1,000	37463
r.58	Failure to ensure smoke alarms compliant prior to tenancy	\$1,000	37464
r.59	Failure to ensure smoke alarms compliant prior to hiring of dwelling	\$1,000	36912

BSCRA Act, Registration Act and Registration Regulations – Authorised officers (Building Commissioner) only

Section/Regulation	Offence	Modified penalty
BSCRA Act		
s.25(2)	Failure to attend a conciliation proceeding as requested by the Building Commissioner	\$1,000
s.47(2)	Failure to comply with a direction of the Building Commissioner to provide information or produce records	\$2,000
Registration Act		
s.4(1)	Using a title when not registered in a class of building service contractor or building service practitioner	\$2,500 - title of builder or building surveyor \$1,250 - title of painter
s.5(1)	Falsely claiming to be registered in class of building service practitioner	\$2,500 - builder or building surveyor \$1,250 - painter
s.5(2)	Falsely claiming to be registered in class of building service contractor	\$2,500 - builder or building surveyor \$1,250 - painter
s.6(1)	Falsely claiming an entitlement to carry out a prescribed building service	\$2,500 - builder or building surveyor work \$1,250 - painter work
s.7(1)	Carrying out, or undertaking to carry out, prescribed building service when not registered	\$2,500 - builder or building surveyor work \$1,250 - painter work
s.7(5)	Subcontracting a prescribed building service to a person who is not entitled to carry out the building service	\$2,500 - builder or building surveyor \$1,250 - painter
s.8	Failure to cause building service contractor's registration number to appear in advertisement	\$250
s.22(2)	Carrying out, or undertaking to carry out, building service without nominated supervisor	\$2,500 – builder or building surveyor \$750 - painter
s.22(3)	Failure to notify the Board of ceasing to have a nominated supervisor	\$500 – builder or building surveyor \$250 - painter
s.25	Contravening a condition of building service provider's registration	\$2,500
s.32(1)	Failure to notify Board of change of address	\$250

Section/Regulation	Offence	Modified penalty
s.33(1)	Failure to notify the Board of change in circumstances affecting eligibility to remain registered	\$1,000
s.34(1)	Failure to notify the Board of financial difficulty	\$1,000
s.34(3)	Failure to notify the Board of insolvency	\$1,000
s.35(1)	Failure to notify the Board of being charged with a serious offence	\$500
s.35(2)	Failure to notify the Board of being convicted of a serious offence	\$500
s.35(3)	Failure to notify the Board of conviction of an offence against the Commonwealth or another jurisdiction	\$500
s.36(1)	Failure to notify the Board of disciplinary action	\$500
s.37(1)	Failure to return registration certificate	\$500
s.49	Contravening a condition that applies to an owner-builder approval	\$2,500
Registration Regulations		
r.21	Failure to display sign – building contractor	\$200
r.27(2)	Failure to display sign – owner-builder	\$200
r.28J(1)	Failure to display certificate of registration – building surveyor contractor	\$200
r.28K(1)	Failure to display sign – building surveying contractor	\$200
r.36	Failure to display sign – painting contractor	\$100

Prior to issuing an Infringement Notice

Before giving an Infringement Notice, it must be established that;

1. there is reason to believe that an offence has been committed and that *prima facie* evidence exists;
2. the intended recipient of the Infringement Notice is the alleged offender; and,
3. the alleged offender's history or the nature of the offence is such that an Infringement Notice is more appropriate than a warning letter, or that a disciplinary or prosecution action is unlikely to be appropriate in the circumstances.

While Infringement Notices provide an efficient and effective alternative to prosecutions they do not provide a short-cut to a full investigative process.

When the alleged offender is issued with an Infringement Notice they may choose to have the matter dealt with by a court. Therefore, *prima facie* evidence to substantiate the offence must be obtained, or be available, before an Infringement Notice is given.

The onus will always be on the Authorised officer to substantiate that giving the Infringement Notice was reasonable in the circumstances.

It should be remembered that even once paid, an Infringement Notice is not an admission for the purposes of any civil or criminal case.

Special note – Infringement Notices for failure to give notice of completion (BA7)

Authorised officers should act judiciously when issuing Infringement Notices for contraventions of section 33(1) of the Building Act – failure to give a notice of completion (BA7).

Before issuing an Infringement Notice, sufficient evidence must exist of the date of completion of the building works the subject of the building permit, or the stage of that work. The alleged offender's compliance history should be considered, as well whether it is more appropriate in the first instance to request or advise that the BA7 must be submitted, before issuing any Infringement Notice.

Issuing an Infringement Notice

An Infringement Notice must be issued by completing all details on the prescribed form (Form 1) and serving it on the alleged offender. The Infringement Notice must be served on the alleged offender within 21 calendar days of the offence.

Where the alleged offender is an individual (natural person), the Infringement Notice must be served:

1. personally;
2. if the alleged offender refuses to accept the Infringement Notice by personal service, by leaving it near the alleged offender and orally drawing their attention to it; or
3. by post to alleged offender's last known address or place of work or business.

Where the alleged offender is a corporation (body corporate), the Infringement Notice must be served:

1. by leaving it at, or posting it to, the corporation's registered office or principal place of business; or
2. personally on the director of the corporation who resides in Australia

A record of service must be signed and retained by the Authorised officer.

If practicable, a letter or memorandum should accompany the Infringement Notice explaining the nature of the alleged offence and any relevant particulars. The letter or memorandum should be signed by the Authorised officer, or relevant person or body who may commence the prosecution.

Process once an Infringement Notice is issued

Once an Infringement Notice is issued, the alleged offender has 28 calendar days from the date of service to pay the modified penalty, or elect to have the matter prosecuted through the courts.

If the alleged offender elects to have the matter prosecuted through the courts, they must sign the Infringement Notice and return it to the Authorised officer at the specified address.

Section 14(2) of the CP Act, allows an approved officer to extend the period for payment. The period for payment may be extended even if the 28 calendar days has elapsed. A local government may appoint a specified employee as an approved officer for the purposes of the CP Act, or the Building Commissioner may appoint and officer(s) within Building and Energy as an approved officer.

Where the alleged offender pays the modified penalty, the amount paid must be dealt with in accordance with section 60 of the *Sentencing Act 1995*.

Withdrawal of an Infringement Notice

An Approved officer may withdraw an Infringement Notice at any time, even after the modified penalty has been paid, by serving the prescribed form (Form 2 – Withdrawal of Infringement Notice) on the alleged offender.

The Approved officer must hold an appropriate certificate of appointment issued for the purposes of the CP Act Part 2.

For record-keeping purposes, the details (including any reasons) for withdrawing an Infringement Notice must be kept.

Alleged offender fails to pay the modified penalty by the due date

Where the alleged offender fails to pay the relevant modified penalty within 28 calendar days from the date of issue (or any extension granted under section 14 of the CP Act), action under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (FPINE Act) may be taken. Before taking action under the FPINE Act, the Registrar must have designated officers of the local government, or the Building Commission (now Building and Energy), as prosecuting officers for the purposes of section 16 and 22 of that Act.

Under the FPINE Act, if payment is not received within the 28 days (or any extension granted), a Final Demand Notice must be served on the alleged offender. For individuals, the Final Demand Notice may be served:

- personally;
- by pre-paid post to the individual's last known address; or
- by leaving the notice at the last known address or principal place of business.

For corporations, the Final Demand Notice must be served by leaving it at, or posting it to, the corporation's registered office or principal place of business.

The Final Demand Notice must contain a statement to the effect that unless the modified penalty (and any enforcement fee) is paid within 28 days of the notice, or the alleged offender notifies the Authorised officer of the election to have the matter dealt with by the courts, the infringement notice may be registered with the Fines Enforcement Registry (Registry) after which a licence suspension order may be made or further enforcement fees imposed.

If the modified penalty (and any enforcement fee) is not paid within 28 days of the issue of the Final Demand Notice, or the alleged offender does not elect to have the matter dealt with through the court, a prosecuting officer may lodge an enforcement certificate with the Registry. The enforcement certificate must contain the details prescribed by section 16 of the FPINE Act.

At any time after the issue of the Final Demand Notice (even if the Infringement Notice has been registered with the Registry), proceedings under the FPINE Act may be withdrawn by the local government or Building and Energy. In such circumstances, a prosecuting officer must serve the alleged offender with a Withdrawal Notice and notify the Registry.

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

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