

Proposed changes to the ACMA's broadcasting enforcement powers

The ACMA is reviewing the guidelines relating to its enforcement powers under the *Broadcasting Services Act 1992* (the BSA) and has released a discussion paper to seek public comment on the proposed changes.

The guidelines explain the types of enforcement action available to the ACMA under certain provisions of the BSA, including remedies for breaches by licensees of the conditions of their broadcasting licence.

The ACMA's proposed changes include outlining:

- > the factors that it may consider in determining the appropriate compliance and enforcement response. These factors may include:
 - > whether the conduct was deliberate, inadvertent or reckless
 - > whether the conduct has caused, or may cause, detriment to another person
 - > whether the conduct involved systemic issues
 - > whether the regulated entity has been the subject of prior enforcement and/or compliance action
 - > the compliance history and culture of the regulated entity
- > whether any action has been taken to remedy and address the consequences of the conduct
- > the educative or deterrent effect of taking enforcement action
- > the circumstances in which the ACMA may give a licensee who has breached, or is breaching, a condition of the licence, a remedial direction directing them to take action to stop the breach, or to ensure the breach does not occur in future. The revised guidelines discuss what type of action the ACMA may specify in a remedial direction and the factors relevant to the time it specifies for compliance
- > its approach to instituting civil proceedings. The ACMA has a broad discretion to decide whether, taking into account the circumstances of the matter, it should commence civil proceedings. The revised guidelines set out the factors that the ACMA will consider when determining whether to commence civil proceedings
- > its general practice for publishing compliance and enforcement action and outcomes. Generally, the ACMA will publish such information; however, there may be circumstances in which it is not appropriate to publish. These factors are also set out in the revised guidelines.

The ACMA made the existing guidelines in February 2007 after the BSA was amended to give it an enhanced range of enforcement powers.

Submissions in response to the discussion paper closed on 18 February 2011. 📧

The discussion paper is available on the ACMA website at www.acma.gov.au (go to About ACMA: News & media centre > Issues for comment > IFC 48/2010).