



Australian Government

**Australian Pesticides and
Veterinary Medicines Authority**



Infringement Notice Guideline

April 2021

© Australian Pesticides and Veterinary Medicines Authority 2021

Ownership of intellectual property rights in this publication

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Australian Pesticides and Veterinary Medicines Authority (APVMA).

Creative Commons licence

With the exception of the Coat of Arms and other elements specifically identified, this publication is licensed under a Creative Commons Attribution 4.0 Licence. This is a standard form agreement that allows you to copy, distribute, transmit and adapt this publication provided that you attribute the work.



A [summary of the licence terms](#) and [full licence terms](#) are available from Creative Commons.

The APVMA's preference is that you attribute this publication (and any approved material sourced from it) using the following wording:

Source: Licensed from the Australian Pesticides and Veterinary Medicines Authority (APVMA) under a Creative Commons Attribution 4.0 Australia Licence. The APVMA does not necessarily endorse the content of this publication.

In referencing this document the Australian Pesticides and Veterinary Medicines Authority should be cited as the author, publisher and copyright owner.

Photographic credits

Cover image: iStockphoto (istockphoto.com)

iStockphoto images are not covered by this Creative Commons licence.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the [Department of the Prime Minister and Cabinet website](#).

Disclaimer

The material in or linking from this report may contain the views or recommendations of third parties. Third party material does not necessarily reflect the views of the APVMA, or indicate a commitment to a particular course of action. There may be links in this document that will transfer you to external websites. The APVMA does not have responsibility for these websites, nor does linking to or from this document constitute any form of endorsement. The APVMA is not responsible for any errors, omissions or matters of interpretation in any third-party information contained within this document.

Comments and enquiries regarding copyright:

Assistant Director, Communications
Australian Pesticides and Veterinary Medicines Authority
GPO Box 3262
Sydney NSW 2001 Australia

Telephone: +61 2 6770 2300

Email: communications@apvma.gov.au

This publication is available from the [APVMA website](#).

Contents

Guideline statement	1
What is an infringement notice?	2
In what circumstances is the APVMA likely to issue an infringement notice?	2
What details will be included in the infringement notice?	2
What can a person do if they receive an infringement notice?	3
What are the consequences of paying and not paying the infringement notice penalty?	3
What are the relevant offences and amounts payable?	4
Payment	4
Requesting an extension of the payment period	4
Can an infringement notice be withdrawn?	4

Guideline statement

The Australian Pesticides and Veterinary Medicines Authority (APVMA) is Australia's national regulator of agricultural and veterinary chemicals and the lead agency for the investigation of allegations of non-compliance with the laws it administers.

The APVMA is responsible for achieving these outcomes under the *Agricultural and Veterinary Chemicals Code Act 1994* (the Agvet Code), the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (the Admin Act), and the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* (the Collection Act) and subordinate laws.

This Infringement Notice Guideline is made under section 6A of the Agvet Code and is intended to provide the public with a synopsis of the legislative provisions relevant to infringement notices, information about the APVMA's functions and powers in relation to infringement notices, as well as linking relevant APVMA contact points and fact sheets.

The authority created by section 6A of the Agvet Code does not extend to functions and powers under the Admin Act, and particularly Division 2 of the Admin Act or the Admin Act Regulations. For consistency, the APVMA treats infringement notices issued by virtue of either the Agvet Code or Admin Act in the same way. In respect of references to infringement notices issued in relation to contraventions of the Admin Act or associated Regulations, this Guideline should be read as the Policy Statement of the APVMA.

This document is not intended to constitute legal or regulatory affairs advice.

What is an infringement notice?

An infringement notice is a notice issued by the APVMA, served personally or via the post, setting out the particulars of an alleged contravention of an offence or civil penalty provision.

Infringement notices describe the options available to the recipient of the notice which include the payment of an amount set in the notice.

Infringement notices may be issued by the APVMA in response to contraventions of legislation which warrant sanction but which may not warrant a prosecution at that time.

Infringement notices have the advantage of allowing an offence to be dealt with quickly and without the time and cost involved in a prosecution. While an infringement notice is issued because a person has contravened a civil penalty provision, payment of the fine is not an admission of guilt (although the APVMA will record the infringement notice against the person's compliance history).

In what circumstances is the APVMA likely to issue an infringement notice?

Section 145DA of the Agvet Code and section 69EK of the Admin Act provide that an APVMA Inspector must have reasonable grounds to believe that a person has contravened a prescribed civil penalty provision before issuing an infringement notice.

In making decisions about issuing an infringement notice, the APVMA considers the following principles:

- Infringement notices may be issued where the contravention is minor and the scale of the impact is known and small.
- An infringement notice will generally not be appropriate where the contravention is ongoing.
- Infringement notices should not be issued for multiple offences arising out of the same course of conduct, unless the offences go to separate and distinct aspects of that conduct.
- Infringement notices should be issued only where the facts of the offence are clear.
- Infringement notices are issued to act as a deterrent. If an infringement notice is not likely to deter the offender from committing a similar offence in the future, consideration should be given to whether prosecution is a more appropriate response.
- Infringement notices should be issued as soon as reasonably possible after the offence comes to the attention of the APVMA, and no later than 12 months after the day the contravention is alleged to have taken place (see section 145DA (2) of the Agvet Code).

What details will be included in the infringement notice?

Section 145DB of the Agvet Code and section 69EKA of the Admin Act detail the particulars that must be present in an infringement notice. This includes a unique identified number, the date it is given, the name of the person to

whom the notice is given, brief details of the alleged contravention, the amount payable, as well as advising of the consequences of paying and not paying the notice. The notice must also include information regarding the process for paying the notice, seeking a withdrawal of the notice and seeking an extension to the payment date.

What can a person do if they receive an infringement notice?

A recipient of an infringement notice is not obliged to pay the penalty, but may choose to do so to avoid prosecution or the commencement of civil penalty proceedings. Payment of an infringement notice is not an admission of guilt and does not result in a criminal record. In most cases, the recipient will have had some contact with the APVMA prior to receiving an infringement notice. This may include a discussion about the alleged contravention and the person may be able to provide documents or information relevant to the circumstances surrounding the alleged contravention.

A person who is issued an infringement notice may communicate with the APVMA about the procedural matters relevant to the infringement notice, however it is not appropriate for the APVMA to offer legal advice or enter into negotiation as to disputed facts. There is an important distinction between the right to be heard and arguing disputed facts. Where facts are disputed, seeking independent legal advice may be appropriate.

If a person elects to contest or seek review of an infringement notice, the APVMA will review the matter, including any submissions made by the person, to determine an appropriate outcome. This may include withdrawal of the infringement notice, reissuing of the infringement notice to another person or considering commencing civil or criminal proceedings. If a person who contests an infringement notice is found guilty, the court may impose a penalty higher than the amount of the infringement notice, and may order the payment of costs and the recording of a conviction.

What are the consequences of paying and not paying the infringement notice penalty?

If a recipient pays the infringement notice penalty within the specified period:

- any liability of the person for the offence specified in the notice is discharged
- the person is not regarded as having been convicted of the offence
- the payment is not taken to be an admission by that person of any liability for the alleged offence
- if the alleged offence is one of importing prohibited imports, the goods are forfeited and the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods. Under section 69B of the Admin Act the APVMA may notify the Comptroller-General of Customs who may then deal with the goods as provided for in the *Customs Act 1901* (Cth).

If a recipient does not pay the infringement notice amount within the specified time, the APVMA may commence civil penalty proceedings or refer the matter to the Commonwealth Director of Public Prosecutions (CDPP) for consideration of criminal prosecution. In such cases, the court may impose a penalty higher than the amount of the infringement notice, and may order the payment of costs and the recording of a conviction.

What are the relevant offences and amounts payable?

Regulations to the Agvet Code and Admin Act set out that an infringement notice is only capable of being issued for contraventions of certain sections of the legislation. The Regulations also provide the penalty payable under an infringement notice and that scales for some offence provisions may apply (e.g. based on the number of containers or volume of product involved in an alleged contravention). The APVMA treats the penalty amounts as being fixed by Regulation and does not give Inspectors discretion to vary the amount of penalty imposed.

The [relevant offences and the amounts payable](#) are set out on the APVMA website.

Payment

Section 145DE of the Agvet Code and section 69EKD of the Admin Act provide that payment of an infringement notice within the specified period discharges any liability of the person for the alleged contravention. Proceedings seeking a civil penalty order may not be brought against the person in relation to the alleged contravention once the infringement notice amount has been paid. Furthermore, the person is not regarded as having admitted liability for the alleged contravention.

Requesting an extension of the payment period

In accordance with section 145DC of the Agvet Code and section 69EKB of the Admin Act, the recipient of an infringement notice may request additional time to pay the infringement notice. Any request for additional time must be made within 28 days after the date of service of the notice. If a request for additional time is not made before the end of the 28 day period, the original due date will remain and a failure to pay the infringement notice amount by that date may lead to further action by the APVMA.

Can an infringement notice be withdrawn?

Section 145DD of the Agvet Code and 69EKC of the Admin Act allows a person to whom an infringement notice has been given to make written representations to the APVMA seeking the withdrawal of the notice. The relevant legislation describes the matters that the APVMA must and may take into account in deciding whether to withdraw an infringement notice.

The APVMA may withdraw infringement notices whether the recipient makes written representations or not. This could occur in circumstances where the material facts change and the APVMA considers the infringement notice is no longer appropriate, e.g. the APVMA Inspector no longer has reason to believe a contravention occurred. Alternately, the discovery of additional evidence may require a different enforcement outcome to occur, e.g. civil proceedings or criminal prosecution. It is important to remember that payment of an infringement notice by the due date is not an admission of liability, discharges liability for the contravention and civil penalty proceedings or prosecution may not be brought in relation to that contravention. If the infringement notice is withdrawn, it does not prevent the APVMA from commencing proceedings in relation to the alleged contravention/offence.

If the APVMA decides to withdraw the infringement notice after payment is received the APVMA must refund an amount equal to that which has been paid.