



# FACT SHEET NVR Act infringement notices

## Guide

## Infringement notices

The National Vocational Education and Training Regulator Act 2011 (NVR Act) contains a range of civil penalty provisions some of which may be dealt with by way of an infringement notice. The decision to issue an infringement notice is one of a range of enforcement actions ASQA can take in order to enforce compliance with the law.

## What is an infringement notice?

An infringement notice issued under the NVR Act recognises and penalises an alleged breach of a relevant civil penalty provision.

An ASQA infringement officer may issue an infringement notice if they reasonably believe that a person has contravened a relevant civil penalty provision of the NVR Act.

## What do the infringement notice provisions relate to?

ASQA is able to issue infringement notices for NVR Act civil penalty provisions that fall within seven broad categories:

1. Conduct that is outside the scope of an RTO's registration
2. Conduct relating to a failure to return a certificate of registration

3. Conduct relating to non-RTOs
4. Conduct that is false or misleading
5. Conduct that relates to specifying the issuer of a qualification or statement of attainment in advertising
6. Conduct that relates to purportedly registered courses
7. Conduct relating to a breach of a condition of an RTO's registration.

## Who is issued the infringement notice?

The notice is issued to a 'person' who it is alleged has contravened the legislation. A person is defined as being a 'legal entity' which includes an 'individual' or 'corporate entity'. If the notice is issued to a named individual, then it is alleged that they were responsible for the contravention of the Act. If the notice is issued to the corporate entity then it is alleged the corporate entity committed the contravention.

A 'person' who receives the infringement notice cannot assign the notice to another 'person'.

## Can I be subject to more than one infringement notice?

Yes – ASQA may issue multiple infringement notices.

ASQA considers the following factors to be especially relevant when deciding to issue multiple infringement notices:

- There have been multiple contraventions of infringement notice provisions
- The contraventions have occurred in a number of states or territories
- The contraventions have involved the use of different types of media, such as online, television, radio, magazines and newspapers, outdoor advertising, or
- There are circumstances which make it desirable to issue multiple notices to deter similar conduct by the person involved in the broader sector.

## What happens after I receive an infringement notice?

You have 28 days from the day after the notice is issued date in order to pay the infringement penalty.

You can apply for an extension of time in which to pay the infringement penalty provided you do so within 28 days of the day after the 'notice issued' date.

ASQA may extend the payment due date and provide notice of that decision before or after the payment due date. ASQA may extend the payment due date more than once.

If ASQA does not extend the payment due date and you are notified of this decision after the payment date, the payment date is extended by seven days, starting the day after ASQA's decision date.

You can pay the infringement penalty by:

- cheque or money order
- direct debit, or

- credit card.

Payment details are listed on the Infringement Notice.

Email remittance advice to [accounts@asqa.gov.au](mailto:accounts@asqa.gov.au) or post to:

Australian Skills Quality Authority

GPO Box 9928

Melbourne VIC 3000

## What happens after I receive an infringement notice?

If the penalty is paid by the payment due date (usually 28 days from the day after the notice issued date unless ASQA has approved an extension), your liability will be discharged and no criminal or civil penalty proceedings will be brought against you in relation to the alleged contravention.

If you don't pay within 28 days (starting from the day after the notice is given to you), then:

- Your liability for the alleged contravention is not discharged.
- Proceedings seeking a civil penalty order may be brought against you for the alleged contravention.
- If you are found by a court to have committed the alleged contravention, you may be liable for the maximum penalty specified (plus court costs).

## What options do I have if I receive an infringement notice that I disagree with?

You may apply in writing within 28 days of the day after notice is given to you for withdrawal of an infringement notice.

If you have been granted an extended time to pay, ASQA may also allow you to apply in writing within that extended time for withdrawal of an infringement notice.

Your application must:

- State that you request a withdrawal of the infringement notice, and
- Detail the grounds upon which you base your request for withdrawal.

ASQA will consider these grounds when making a decision about whether to withdraw the infringement notice.

ASQA will notify you in writing if the notice is withdrawn. If the notice is withdrawn, proceedings seeking a civil penalty order may

still be brought against you in relation to the alleged contravention.

If ASQA withdraws the notice and you have already paid the amount stated in the notice, you will be refunded an amount equal to the amount paid.

If ASQA makes a decision not to withdraw the notice, you will also be notified of this decision in writing. The time for payment is extended to 28 days, starting from the day after notice of the refusal is given.

## Infringement notice categories

Depending on the category of conduct, and the specific provision the alleged contravention relates to, the individual or organisation to whom the notice applies will vary.

## What is a penalty unit and how are the maximum penalties calculated?

Section 4AA of the *Crimes Act 1914* sets the monetary amount of a penalty unit. At the date of publishing, this amount is \$330.00.

The penalty for an infringement notice is not able to exceed one-tenth of the maximum penalty prescribed for contravening that provision (as per section 149 (2) of the NVR Act). If you do not pay the infringement notice on time and you are found by a court to have committed the alleged contravention, you may be liable for the maximum penalty prescribed for contravening that provision.

# 1. Conduct that is outside the scope of registration

An infringement notice may be issued to an RTO for the following contraventions:

Infringement	Penalty
<b>s.94 Providing all or part of VET course outside scope of registration</b> <ul style="list-style-type: none"><li>The VET course is provided (in whole or in part), and</li><li>The VET course or part of the VET course is not within the RTO's scope of registration</li></ul>	<ul style="list-style-type: none"><li>Maximum infringement notice penalty units 120</li></ul>
<b>s.96 Issuing VET qualification outside scope of registration</b> <ul style="list-style-type: none"><li>An RTO purports to issue a VET qualification, and</li><li>The qualification relates to a VET course that is not within the RTO's scope of registration</li></ul>	<ul style="list-style-type: none"><li>Maximum infringement notice penalty units 300</li></ul>
<b>s.98 Issuing VET statement of attainment outside scope of registration</b> <ul style="list-style-type: none"><li>An RTO purports to issue a VET statement of attainment, and</li><li>The statement of attainment relates to part of a VET course that is not within the RTO's scope of registration</li></ul>	<ul style="list-style-type: none"><li>Maximum infringement notice penalty units 300</li></ul>
<b>s.100 Advertising all or part of a VET Course outside scope of registration</b> <ul style="list-style-type: none"><li>an RTO itself publishes or broadcasts an advertisement or causes an advertisement to be published or broadcast, and</li><li>the advertisement makes representation that the RTO does or will provide all or part of a VET course, and</li><li>the VET course or part of the VET course is not within the RTO's scope of registration.</li></ul>	<ul style="list-style-type: none"><li>Maximum infringement notice penalty units 120</li></ul>

## 2. Conduct relating to failure to return certificate of registration

This type of infringement notice may be issued to:

- A RTO that has not had its registration renewed, or
- A former RTO whose registration has been cancelled under section 39 of the NVR Act.

Infringement	Penalty
<b>s.112 Failure to return certificate of registration</b> <ul style="list-style-type: none"><li>• An organisation that is no longer registered fails to return its certificate of registration to ASQA within 10 days of the date of effect of cancellation/withdrawal of registration.</li></ul>	<ul style="list-style-type: none"><li>• Maximum infringement notice penalty units 60</li></ul>

### 3. Conduct relating to non-RTOs

This type of infringement notice may be issued to:

- a 'person' (natural or corporate) that holds him/her/itself out as an RTO.

Infringement	Penalty
<b>s.115 False claiming to be an NVR registered training organisation</b> <ul style="list-style-type: none"><li>• a person holds him/her/itself out to be an RTO, and</li><li>• the person is not an RTO</li></ul>	<ul style="list-style-type: none"><li>• Maximum infringement notice penalty units 300</li></ul>
<b>s.117 Providing, or offering to provide, all or part of a VET course without registration</b> <ol style="list-style-type: none"><li>1.<ul style="list-style-type: none"><li>• a person provides or offers to provide all or part of a VET course in a referring State/Territory, and</li><li>• the person is not an RTO.</li></ul></li><li>OR</li><li>2.<ul style="list-style-type: none"><li>• a person is a registered provider (i.e. under ESOS Act) other than a secondary school, and</li><li>• the person provides or offers to provide all or part of a VET course in a non-referring State, and</li><li>• the person is not an RTO.</li></ul></li></ol>	<ul style="list-style-type: none"><li>• Maximum infringement notice penalty units 300</li></ul>
<b>s.119 Issuing vet qualification</b> <ul style="list-style-type: none"><li>• a person purports to issue a VET qualification; and</li><li>• the person is not an RTO</li></ul>	<ul style="list-style-type: none"><li>• Maximum infringement notice penalty units 300</li></ul>
<b>s.121 Issuing a VET statement of attainment</b> <ul style="list-style-type: none"><li>• a person purports to issue a VET statement of attainment; and</li><li>• the person is not an RTO</li></ul>	<ul style="list-style-type: none"><li>• Maximum infringement notice penalty units 300</li></ul>

## 4. Conduct that is false or misleading

This type of infringement notice may be issued to a 'person' (natural or corporate). This type of infringement notice can be issued to either RTO, or a non-RTO.

Infringement	Penalty
<p><b>s.123 Making false or misleading representation in advertisement</b></p> <ul style="list-style-type: none"><li>• a person makes a representation that relates to:<ul style="list-style-type: none"><li>○ all or part of a VET course, or</li><li>○ a course that is held out to be a VET course, or</li><li>○ part of a course that is held out as being part of a VET course, or</li><li>○ a VET qualification, or</li><li>○ a qualification that is held out as being a VET qualification, and</li></ul></li><li>• the representation is made in connection to an advertisement, and</li><li>• the representation is false or misleading in a material particular.</li></ul>	<ul style="list-style-type: none"><li>• Maximum infringement notice penalty units 30</li></ul>
<p><b>s.125 Making false or misleading representation relating to VET course or VET qualification</b></p> <ul style="list-style-type: none"><li>• a person makes a representation that relates to:<ul style="list-style-type: none"><li>○ all or part of a VET course, or</li><li>○ a course that is held out to be a VET course, or</li><li>○ part of a course that is held out as being part of a VET course, or</li><li>○ a VET qualification, or</li><li>○ a qualification that is held out as being a VET qualification, and</li></ul></li><li>• the representation is false or misleading in a material particular.</li></ul>	<ul style="list-style-type: none"><li>• Maximum infringement notice penalty units 12</li></ul>

This type of infringement notice can be issued to either an RTO, or an Executive Officer of the RTO:

Infringement	Penalty
<p><b>s.100A Making false or misleading representation in advertisement</b></p> <ul style="list-style-type: none"><li>• The RTO makes a representation that relates to all or part of a VET course; or<ul style="list-style-type: none"><li>○ a course that is held out as being a VET course; or</li><li>○ a part of a course that is held out as being part of a VET course; or</li><li>○ a VET qualification; or</li><li>○ a qualification that is held out as being a VET qualification; or</li><li>○ the organisation's operations; and</li></ul></li><li>• the representation is made in connection with an advertisement; and</li><li>• the representation is false or misleading in a material particular.</li></ul>	<ul style="list-style-type: none"><li>• Maximum infringement notice penalty units 30</li></ul>
<p><b>s.100C Making false or misleading representation relating to VET course, VET qualification or operations</b></p> <ul style="list-style-type: none"><li>• The RTO makes a representation that relates to:<ul style="list-style-type: none"><li>○ all or part of a VET course; or</li><li>○ a course that is held out as being a VET course; or</li><li>○ part of a course that is held out as being part of a VET course; or</li><li>○ a VET qualification; or</li><li>○ a qualification that is held out as being a VET qualification; or</li><li>○ the organisation's operations; and</li></ul></li><li>• the representation is false or misleading in a material particular.</li></ul>	<ul style="list-style-type: none"><li>• Maximum infringement notice penalty units 30</li></ul>



## 5. Conduct that relates to specifying the issuer of a qualification or statement of attainment in advertising

This type of infringement notice may be issued to a 'person' (natural or corporate). This type of infringement notice can be issued to either an RTO, or a non-RTO.

Infringement	Penalty
<p><b>s.123B Advertising or offering VET course without identifying issuer of VET qualification or statement of attainment</b></p> <ul style="list-style-type: none"><li>• a person publishes or broadcasts an advertisement or causes an advertisement to be published or broadcast, or continues to allow an advertisement to be published or broadcast relating to a VET course, or</li><li>• a person offers to provide or continues to offer to provide all or part of a VET course, or makes a representation about the availability of or continues to make a representation about the availability of all or part of a VET course, and</li><li>• the advertisement, offer or representation does not include the name and registration code of the RTO that will issue a VET qualification or VET statement of attainment relating to the VET course or part of the VET course.</li></ul>	<ul style="list-style-type: none"><li>• Maximum infringement notice penalty units 150</li></ul>

## 6. Conduct that relates to purportedly registered courses

This type of infringement notice may be issued to a 'person' (natural or corporate).

Infringement	Penalty
<b>s.127 Purporting to issue a VET qualification</b> <ul style="list-style-type: none"><li>a person purports to issue a VET qualification, and</li><li>the qualification is not a VET qualification.</li></ul>	<ul style="list-style-type: none"><li>Maximum infringement notice penalty units 300</li></ul>
<b>s.129 Purporting to issue a VET statement of attainment</b> <ul style="list-style-type: none"><li>a person purports to issue a VET statement of attainment, and</li><li>the qualification is not a VET statement of attainment.</li></ul>	<ul style="list-style-type: none"><li>Maximum infringement notice penalty units 300</li></ul>

## 7. Conduct that relates to purportedly registered courses

An infringement notice may be issued to an RTO for the following breaches of registration conditions:

Infringement	Penalty
<p><b>s.111 An RTO breaches a condition of registration</b></p> <p>1.</p> <ul style="list-style-type: none"><li>s.111(1) An RTO breaches a condition of registration by issuing a VET qualification or VET statement of attainment to an individual who has not been assigned a student identifier</li></ul> <p>Penalty</p> <ul style="list-style-type: none"><li>Maximum infringement notice penalty units 120</li></ul> <p>Or</p> <p>2.</p> <ul style="list-style-type: none"><li>s.111(2) An RTO breaches a condition of registration by failing to meet Data Provision Requirements</li></ul>	<ul style="list-style-type: none"><li>Maximum infringement notice penalty units 60</li></ul>