

THE GOVERNMENT RAMPS UP PENALTIES FOR COMPETITION AND CONSUMER LAW BREACHES - AU\$50 MILLION OR 30% TURNOVER FOR COMPANIES AND AU\$2.5 MILLION FOR INDIVIDUALS

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In July, we outlined the new Government's Competition and Consumer Law policy initiatives ([click here](#)).

The Government has now moved forward with one of these initiatives, publishing for consultation a draft bill and related explanatory materials ([click here](#)), seeking very substantial increases to the maximum penalties for breaches of the *Competition and Consumer Act 2010* (CCA), including the Australian Consumer Law.

The proposed maximum penalties, for each breach are:

For Corporations, the Greater of:

- AU\$50 million (current law is AU\$10 million); or
- 30% of adjusted Australian turnover (current law is 10% of annual turnover in the preceding 12 months - adjusted turnover will reflect turnover during the breach period and will be a minimum of 12 months); or
- Three times the value of the benefit gained from the breach (this remains unchanged).

For Individuals:

- AU\$2.5 million (current law is AU\$500,000). The criminal sanctions of up to 10 years' jail for cartel conduct continue to apply.

The Government has also now clarified that these new maximum penalties will apply to breaches of both competition laws and consumer laws.

These new maximum penalties represent a five-fold increase from the current penalties.

ALL ABOUT DETERRENCE

As outlined in the Explanatory Material for the draft bill, the purpose of the changes is to ensure that *“the price of misconduct is high enough to deter unfair activity”* and *“ensure consumers retain a robust level of protection.”*

The changes also seek to bring Australia's competition law penalties more in line with international jurisdictions, including the EU where companies can be fined 10% of global turnover and a number of multi-billion dollar penalties have been handed down in recent years.

WHAT DOES THIS MEAN FOR BUSINESSES?

The current highest penalty for a competition law breach is AU\$46 million (for cartel conduct by Yazaki) and for consumer law breaches, the highest penalties are AU\$153 million for a consumer law breach (for misleading and unconscionable conduct by AIPE) and AU\$125 million (for misleading conduct by Volkswagen). We expect to see significantly higher penalties under the proposed changes.

This is a timely reminder for businesses to ensure that:

- Rigorous competition and consumer compliance processes are in place;
- Staff are well trained to at least "issue-spot" potential competition and consumer law risks and are empowered to seek advice and escalate any concerns; and
- Directors, senior management and all staff are aware that competition and consumer law breaches can attract personal liability (in addition to penalties and negative PR for the business).

Interested parties have until 25 August 2022 to comment on this consultation.

Please reach out to any member of our team if you need assistance in making any comments.

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