



Penalties to increase under proposed amendments to Competition and Consumer Law Authors: John Gray & Natasha Arico

The Federal Government released exposure draft legislation aimed at increasing penalties for contraventions of Australia's competition and consumer laws.

In August 2022, the Federal Government released the *Treasury Laws Amendment (Competition and Consumer Reforms No. 1) Bill 2022: More competition, better prices* for stakeholder consultation. The exposure draft legislation seeks to bolster Australia's competition laws by significantly increasing pecuniary penalties for anti-competitive behaviour under parts of the *Competition and Consumer Act 2010* (CCA) and for contraventions of the *Australian Consumer Law* (ACL).

The new penalty regime takes specific aim at the telecommunications industry, given its unique attributes making it more susceptible to anti-competitive behaviour compared to other industries.

The proposed changes seek to realign Australia's penalty regime with comparable international jurisdictions.

The increase to penalties will apply to a spectrum of anti-competitive behaviour, including cartel conduct, misuse of market power, prohibited conduct for retail pricing, bait advertising, unconscionable conduct, as well as false & misleading conduct.

In summary, maximum penalties imposed on corporations will increase to the greater of:

- \$50 million (previously \$10 million); or
- If the court can determine the value of the benefit obtained, three times the value of the benefit; or
- 30% of a corporation's annual turnover during the period in which the breach occurred (previously 10%).

For individuals, the maximum pecuniary penalty will increase to \$2.5 million (previously \$500,000.00).

For the telecommunications industry, corporations will be subject to a new maximum penalty of:

- \$71 million and \$3 million for each day (where contravention continues for more than 21 days); or otherwise
- \$50 million and \$1 million for each day, or
- 30% of the adjusted turnover during the period of the breach.

For individuals, the new maximum penalty will increase from \$500,000 to \$2.5 million.

The Government want to ensure the price of misconduct is high enough to deter unfair activity by companies who view breaches of competition law as a necessary cost of doing business.

What happens next?

While a Draft Bill is yet to be introduced and debated by Parliament, given the potential implications of the changes, companies should take stock of their competition and consumer law practices and ensure ongoing compliance and training to minimise the risk of breaches and subsequent penalty.

Our team are ready to assist you in all matters relating to your competition and consumer law best practices and risk, and any dealings with ACCC investigations and enforcement actions. If you would like advice about anything in this article, please contact [John Gray](#) on 02 8235 1205 or [Jimmy Gill](#) on 02 82351239 or your usual ClarkeKann contact.