

Kluwer Competition Law Blog

The Australian 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
- 3 x 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 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.

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