PENALTIES FOR AUSTRALIAN CONSUMER LAW BREACHES INCREASE TENFOLD (IF NOT MORE)

Date: 24 August 2018

By: Ayman Guirguis

IN BRIEF

- On 23 August 2018, Federal Parliament passed the *Treasury Laws Amendment (2018 Measures No. 3) Bill 2018* (**Bill**) to substantially increase the maximum financial penalties for contraventions of the Australian Consumer Law (**ACL**).
- The maximum penalties for consumer law breaches are now on par with the penalties for breaches of competition law provisions in the *Competition and Consumer Act (2010)* (**CCA**).
- Under the new law, the maximum penalties for corporations will increase from AUD1.1 million to the greater of one of the following:
  - AUD10 million
  - 3 x the value of the benefit
    or
  - if the value of the benefit cannot be determined – 10% of the annual turnover.
- The maximum penalty for individuals will also increase from AUD220,000 to AUD500,000.

WHY THE INCREASE IN PENALTIES?

The recommendation to align the maximum penalties for consumer law breaches with that of competition law breaches was first made by Consumer Affairs Australia and New Zealand in March 2017 as part of the Australian Consumer Law Review.

In recent years, the ACCC has widely professed that the current consumer law penalties are inadequate to deter businesses from engaging in misleading or deceptive conduct and unconscionable conduct. This view has also been echoed by a number of judges including Justice Gordon in *ACCC v Coles* who handed down a AUD10 million penalty while noting that it is arguably inadequate for a corporation the size of Coles.

ACCC Chairman Rod Sims recently summarised the ACCC's view stating:

"Penalties need to hit the bottom line so they are not simply seen as the cost of doing business. Perhaps more important, penalties need to be high enough to be noticed by boards and senior managers so that compliance with the law is a higher priority. "

©2005-2026 K&L Gates LLP. All Rights Reserved.

Internationally, the European Commission is similarly looking to increase the penalties for consumer law breaches by allowing individual EU countries to impose fines of up to 4% of annual turnover in all EU countries in which the breach had an impact.

WHAT CAN BUSINESSES EXPECT?

Once the new laws are in effect, businesses can expect far greater penalties for consumer law breaches to be sought by the ACCC and handed down by the Courts. While the highest consumer law penalty imposed to date is AUD10 million, the highest penalty for a competition law offence, which will have the same maximum penalty under the upcoming changes, currently stands at AUD46 million.

As is the ACCC's usual approach, larger businesses will be targeted, particularly since annual turnover will soon be directly relevant to the calculation of maximum penalties.

The amended penalty regime will not apply retrospectively; rather it will apply to acts, omissions or offences from when the Bill receives Royal Assent.

WHAT SHOULD YOU DO?

We recommend that:

- all businesses review their current practices involving interactions with consumers and other third parties and all outward-facing materials, be it marketing materials/brochures, websites, social media as well as more operational documents such as product specification materials, tender responses etc - you should have in place rigorous sign-off processes and related compliance measures
- businesses may need to more closely "weigh up" the benefits of more "risky" approaches to such communications against the possibility of investigation by the ACCC and significantly greater penalties
- businesses should ensure that all staff are aware of the increase in fines (both for companies and individuals) and should ensure that staff are appropriately trained on their obligations under the ACL.

For more information about the content of this Insight, or assistance with compliance with your consumer law obligations, please contact a member of the K&L Gates Competition and Consumer Law team.

KEY CONTACTS



AYMAN GUIRGUIS
PARTNER

SYDNEY
+61.2.9513.2308
AYMAN.GUIRGUIS@KLGATES.COM

©2005-2026 K&L Gates LLP. All Rights Reserved.

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.