

Increased penalties for corporate and financial sector misconduct – INDUSTRY CONSULTATION

The key changes to be made by the Draft Bill are shown in the following table:

Current Law	Current maximum penalty	Proposed maximum penalty	Comment / new offences
IMPRISONMENT PENALTIES			
Criminal offences in the Corporations Act, ASIC Act and Credit Act	3 months to 2 years imprisonment	2 years to 5 years imprisonment	<p>The minimum and maximum imprisonment penalties for existing criminal offences will be increased to "reflect the seriousness of the misconduct".</p> <p>In addition, new imprisonment penalties are proposed for some offences. For example a person must not provide false or misleading statements, which currently has a financial penalty only.</p>
<p>Example criminal offences include when:</p> <ul style="list-style-type: none"> an appropriate AFSL licence is not held by the required individuals; and individuals provide false or misleading information. 	2 years	5 years	
FINANCIAL PENALTIES			
<p>Prescribed strict and absolute liability offences are contained in the Corporations Act, ASIC Act and Credit Act.</p> <p>For example, these apply where a company:</p> <ul style="list-style-type: none"> fails to notify market regulators; fails to keep financial records; and fails to conduct audits. 	<p>For individuals</p> <ul style="list-style-type: none"> 5 to 100 penalty units (\$1,050 – \$21,000) <p>For bodies corporate</p> <ul style="list-style-type: none"> 5 times the above, being 25 to 500 penalty units (\$5,250 – \$105,000) 	<p>For individuals</p> <ul style="list-style-type: none"> 20 to 240 penalty units (\$4200 – \$50,400) <p>For bodies corporate</p> <ul style="list-style-type: none"> 10 times the above, being 200 to 2400 penalty units (\$42,000 – \$500,000) 	<p>The minimum and maximum financial penalties for existing offences will be increased.</p> <p>The multiplier factor for corporates will be doubled from 5 times to 10 times the individual financial penalty.</p> <p>The intention is to increase the maximum penalty available to be commensurate with the level of culpability.</p> <p>The penalty imposed is intended to be in line with the degree of knowledge, recklessness or intention that the offence was committed.</p> <p>This differs from the strict and absolute liability previously imposed that did not take into account knowledge, recklessness or intention, imposing the same penalty regardless.</p> <p>Where there is no fault element, the Draft Bill proposes for imprisonment penalties to be removed.</p>



Current Law	Current maximum penalty	Proposed maximum penalty	Comment / new offences
Corporations, ASIC, Credit and Insurance Contracts Acts, and Credit Code contain corporation / scheme civil penalty provisions and financial services civil penalty provisions	For individuals, \$200,000 For bodies corporate, \$1 million	For individuals the greater of <ul style="list-style-type: none"> 5,000 penalty units (\$1,050,000); and the benefit derived, or detriment avoided, because of the contravention, multiplied by three. 	<p>The proposed changes intend to provide clarity and consistency across different Acts for similar contraventions.</p> <p>The penalties are increased.</p>
Client money reporting rules contain Civil penalty provisions	\$1 million	For bodies corporate, the greater of <ul style="list-style-type: none"> 50,000 penalty units (\$105,000,000); the benefit derived, or detriment avoided, because of the contravention, multiplied by three); and 10% of the annual turnover of the body corporate (maximum monetary value of 1 million penalty units). 	
The derivative transaction rules and the derivative trade repository rules contain Civil penalty provisions	1,000 penalty units (\$210,000).		
Civil penalty provision in the financial benchmark rules and the compelled financial benchmark rules.	5,550 penalty units (\$1,165,500)		
Contravention of a Part 7.7A civil penalty provision in the Corporations Act (Best interests obligations and remuneration)	Best Interests obligations and remuneration: For individuals, \$50,000 and \$200,000 respectively For bodies corporate, \$250,000 and \$1 million respectively		
Contravention of a civil penalty provision in the ASIC Act	For individuals, 30 to 2,000 penalty units (\$6,300 – \$420,000). For bodies corporate, 150 to 10,000 penalty units (\$31,500 – \$2,100,000)		
Contravention of a civil penalty provision in the Credit Act	For individuals, 2,000 penalty units (\$420,000). For bodies corporate, 10,000 penalty units (\$2,100,000)		
Contravention of a civil penalty provision in the Credit Code	\$500,000 for key requirements and 2000 penalty units (\$420,000) if it is not a key requirement		



Current Law	Current maximum penalty	Proposed maximum penalty	Comment / new offences
Strict and absolute liability offences in the Corporations Act are not subject to an infringement notice regime.	None	For individuals 200 to 3,000 penalty units (\$42,000 – \$630,000). For body corporates 1,000 to 15,000 penalty units (\$21,000 – \$3,150,000)	All strict and absolute liability offences under the Corporations Act will be subject to an infringement notice regime. ASIC may issue infringement notices that may be paid as an alternative to criminal or civil proceedings. In the event the amount specified on the infringement notice is paid, this is not considered to be an admission of guilt, however, if it is not paid ASIC may choose to prosecute the matter.
No equivalent to the remedy of relinquishment.	None	Up to the amount of financial benefits or profits received from the crimes	The remedy of relinquishment is now available under the Corporations Act, ASIC Act, Credit Act and Insurance Contracts Act. The intended purpose of this section is to neutralise any financial benefit that a wrongdoer has gained as a result of wrongdoing. It enables the Commonwealth to deprive persons of any financial benefits or profits received from committing crimes under the relevant Acts.
No equivalent to the compensation of victims.	N/A	N/A	Priority is given to compensating victims over ordering the payment of financial penalties in the Corporations Act and Insurance Contracts Act.
Section 184 of the Corporations Act is contravened if an officer of a corporation uses their position or information known to them to gain an advantage for themselves or someone else, or cause a detriment to the corporation.	N/A	N/A	A contravention of section 184 of the Corporations Act, where there is reckless or intentionally dishonest actions by officers, will still constitute an offence where there is a positive outcome for a corporation from this contravention.

*Each Penalty Unit is equal to \$210 as of date of publication