

Article Information

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Service: Banking & Finance, Corporate & Commercial, Insurance

Sector: Financial Services

Significantly higher penalties for corporate misconduct in effect

Recently passed legislation significantly increased the penalties applicable to wrongdoing in relation to consumer credit, financial services and general insurance. On the whole, penalties are increased and new methods of determining penalties are introduced. Partner, Andrea Beatty, provides an overview of the new penalties.

Recently passed legislation significantly increased the penalties applicable to wrongdoing in relation to consumer credit, financial services and general insurance. On the whole, penalties are increased and new methods of determining penalties are introduced.

The *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 (Amending Act)* received Royal Assent on 12 March 2019 and commenced operation on 13 March 2019. It introduced harsher penalties for offences and contraventions of civil penalty provisions under the *Corporations Act 2001 (Corporations Act)*, *National Consumer Credit Protection Act 2009 (NCCP Act)*, *Australian Securities and Investments Commission Act 2001 (ASIC Act)* and *Insurance Contracts Act 1984*.

For offences under the Corporations Act, NCCP Act or ASIC Act on or after 13 March 2019, the maximum penalty will be:

- for individuals:
 - if only a fine is specified, the fine specified
 - if only a term of imprisonment less than 10 years is specified, the term of imprisonment specified or a fine for the number of penalty units equal to ten times the term of imprisonment specified (in months), or both, or
 - if only a term of imprisonment of 10 years or more is specified, the term of imprisonment specified or a fine the greater of 4,500 penalty units (\$945,000) or three times the benefit derived or detriment avoided because of the offence, and
- for bodies corporate:
 - if only a fine is specified, ten times the fine specified
 - if only a term of imprisonment less than 10 years is specified, a fine for the number of penalty units equal to 100 ten times the term of imprisonment specified (in months), or
 - if only a term of imprisonment of 10 years or more is specified, a fine the greater of 45,000 penalty units (\$945,000), three times the benefit derived or detriment avoided because of the offence or 10% of the annual turnover of the body corporate for the 12 month period ending at the end of the month in which the body corporate committed or began to commit the offence.

For contraventions of civil penalty provisions under the NCCP Act or ASIC Act on or after 13 March 2019, the maximum pecuniary penalty will be:

- for individuals, the greater of the penalty specified for the provision or three times the benefit derived or detriment avoided because of the contravention, and
- for bodies corporate, the greater of:
 - ten times the penalty specified for the provision
 - three times the benefit derived or detriment avoided because of the contravention, or
 - the lesser of 10% of the annual turnover of the body corporate for the 12 month period ending at the end of the month in which the body corporate contravened or began to contravene the provision or 2.5 million penalty units (\$525 million).

For contraventions of civil penalty provisions under the Corporations Act, the maximum pecuniary penalty will be:

- for individuals, 5,000 penalty units (\$1.05 million) or three times the benefit derived or detriment avoided because of the contravention, and
- for bodies corporate, the greater of:
 - 50,000 penalty units
 - three times the benefit derived or detriment avoided because of the contravention, or
 - the lesser of 10% of the annual turnover of the body corporate for the 12 month period ending at the end of the month in which the body corporate contravened or began to contravene the provision or 2.5 million penalty units (\$525 million).

The Amending Act also replaces the infringement notice provisions in the Corporations Act, NCCP Act and ASIC Act with a more clearly set out (but not substantially different) infringement notice regime.

The Amending Act also contains miscellaneous penalty changes for particular provisions of the affected statutes. Most notably, contravention of a number of the general conduct obligations of credit and financial services licensees, including the obligation to act efficiently, honestly and fairly, is made a civil penalty provision.