

Committing an offence has become more expensive following the Albanese government increasing the Commonwealth penalty unit as part of the federal budget delivered on 25 October 2022. As of 1 January 2023, the base amount of the Commonwealth penalty unit increased from AU\$222 to AU\$275 and will apply to offences committed after the amending legislation came into force.

Many pieces of legislation set out maximum penalties by reference to “penalty units,” which are a fixed amount that determine the amount a person – either an individual or a corporation – is fined when they commit an offence. A fine is calculated by reference to the amount of penalty units prescribed, multiplied by the dollar amount per unit, and are set at both a state and federal level.

The recent increase has affected the maximum penalties payable under various laws, including, but not limited to:

- Crimes Act 1914 (Cth)
- Fair Work Act 2009 (Cth)
- Corporations Act 2001 (Cth)
- Australian Securities and Investments Commission Act 2001 (Cth)
- Taxation Administration Act 1953 (Cth)
- Competition and Consumer Act 2010 (Cth)
- National Consumer Credit Protection Act 2009 (Cth) and accompanying National Credit Code
- Insurance Contracts Act 1984 (Cth)
- Privacy Act 1988 (Cth)

We set out, in the following table, common penalties that businesses operating in Australia ought to be aware of, which should serve as a useful reminder to businesses and individuals involved in decision making to ensure that their practices are compliant with the laws that govern their operations.

Act	Provision/Offence	New Maximum Penalty Amount
Fair Work Act 2009 (Cth)	45 – Contravening a modern award	Corporations – 300 penalty units, or AU\$82,500 Individuals – 60 penalty units, or AU\$16,500
	50 – Contravening an enterprise agreement	
	340 – Breach of general protections provisions	
	535 – Breach of record keeping obligations	
	557A – Serious contraventions (a matter of degree of the above offences, as opposed to its own kind of offence)	Corporations: 3,000 penalty units, or AU\$825,000 Individuals: 600 penalty units, or AU\$165,000
Corporations Act 2001 (Cth)	180 (1) – Directors and other officers of the company failing to act with care and diligence	For individuals, the greater of: • 5,000 penalty units (AU\$1,375,000) • Three times the benefit obtained and detriment avoided
	181(1) – Directors and other officers of the company failing to act in the best interests of the company as a whole	
	182 – Improper use of an executive position	
	183 – Improper use of company information by directors, other officers and employees	

Act	Provision/Offence	New Maximum Penalty Amount	
ASIC Act 2001 (Cth)	12DA – A person engaging in misleading or deceptive conduct in relation to financial services	2,000 penalty units, or AU\$550,000	
	12DB – A person engaging in false or misleading representations in relation to financial services		
	12DI – A person accepting payment without intending or being able to supply as ordered		
Taxation Administration Act 1953 (Cth)	8K – False or misleading statements	20 penalty units, or AU\$5,500	
	8L – A person keeps records incorrectly		
	8U – A person falsifies or conceals identity with intention of deceiving or misleading	50 penalty units, or AU\$13,750	
Competition and Consumer Act 2010 (Cth)	134C – Penalties in infringement notices for contraventions of the Australian Consumer Law	For contraventions of provisions in:	Listed corporation – 600 penalty units, or AU\$165,000 Unlisted corporation – 60 penalty units, or AU\$16,500 Individual – 12 penalty units, or AU\$3,300
		<ul style="list-style-type: none"> Part 2-2 (unconscionable conduct) Part 3-1 (unfair practices, including misleading conduct) 	
		For a contravention of s 221 (non-compliance with substantiation notice)	
		For a contravention of s 222(1) (false or misleading information response to substantiation notice)	Corporation – 50 penalty units, or AU\$13,750 Individual – 10 penalty units, or AU\$2,750
	51ACF – Infringement notices for contravening an industry code	Corporation – 50 penalty units, or AU\$13,750 Individual – 10 penalty units, or AU\$2,750	
	53ZK – Infringement notices for contravening a gas market provision	600 penalty units, or AU\$165,000	
	55B, 55J – Infringement notices for excessive payment surcharges	Listed corporation – 600 penalty units, or AU\$165,000 Unlisted corporation – 60 penalty units, or AU\$16,500 Individual – 12 penalty units, or AU\$3,300	
	Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)	51B – Failure of a designated service provider to not enrol on the Reporting Entities Roll	Corporation – 100,000 penalty units, or AU\$27.5 million Individual – AU\$5.5 million
53 and 55 – Movement of physical currency in and out of country, avoiding reporting obligations		Where the transaction is for more than AU\$10,000, 500 penalty units, or AU\$137,500	
136 – Providing false or misleading information		10,000 penalty units, or AU\$2.75 million	
137 – Producing false or misleading documents			
139 – Providing a designated service using a false customer name		120 penalty units, or AU\$33,000	
142-143 – Conducting transactions to avoid reporting requirements		300 penalty units, or AU\$82,500	

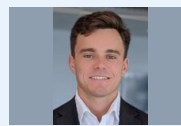
Act	Provision/Offence	New Maximum Penalty Amount
Criminal Code Act 1995 (Cth)	400.2B-4 – Money-laundering offences	Where the money or property value is >AU\$1 million, 1,500 penalty units, or AU\$412,500 If the person is reckless, 720 penalty units, or AU\$198,000 If the person is negligent, 300 penalty units, or AU\$82,500 Where the money or property value is <AU\$1000, 60 penalty units, or AU\$16,500 If the person is reckless, 30 penalty units, or AU\$8,250 If the person is negligent, 10 penalty units, or AU\$2,750
Privacy Act 1988 (Cth)	Various breaches of credit reporting restrictions, including: <ul style="list-style-type: none"> • 20C(1) – Unauthorised collection of credit reporting information • 20E(1) – Unauthorised use or disclosure of credit reporting information • 20G(1) – Using credit reporting information for the purposes of direct marketing • 20P(1) – A credit reporting body uses or discloses false or misleading credit reporting information in a material particular • 21D(1) – Unauthorised disclosure of credit information to a credit reporting body • 21G(1) – Unauthorised use or disclosure of credit eligibility information by a credit provider 	2,000 penalty units, or AU\$550,000

Please note that the above table only includes the civil penalties that are applicable, and does not consider any criminal penalties that an offence may attract. The Commonwealth penalty unit will be increased with increases in the Consumer Price Index on 1 July 2023, and then annually for a period of three years. We will provide a further update and an amended table when this review occurs. The increase in the Commonwealth penalty unit is a timely reminder for businesses and individuals to remain vigilant and aware of their obligations, as well as the potential consequences of a breach.

Authors



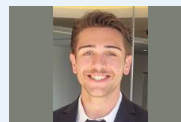
David Starkoff
Partner, Sydney
T +61 2 8248 7833
E david.starkoff@quirepb.com



David Horton
Associate, Sydney
T +61 2 8248 7821
E david.horton@quirepb.com



Erin Kidd
Director, Sydney
T +61 2 8248 7837
E erin.kidd@quirepb.com



Jordan Markezic
Law Graduate, Sydney
T +61 2 8248 7803
E jordan.markezic@quirepb.com



Connor McClymont
Associate, Perth
T +61 8 9429 7534
E connor.mcclymont@quirepb.com