



Strengthening Competition to Ease Cost of Living Pressures

Party:

Australian Labor Party

Summary of proposal:

This proposal has 4 components, each starting from 1 July 2022.

- **Component 1** would increase maximum penalties under the *Competition and Consumer Act 2010* (the Act) from \$10 million to \$50 million. Alternatively, for anti-competitive conduct penalties, judges may adopt the European Union’s methodology, which is based on 30 per cent of the annual sales of the product or service relating to the infringement, multiplied by the number of years for which the infringement took place.
- **Component 2** would triple the number of penalty units for infringement notice penalties that the Australian Competition and Consumer Commission (ACCC) can issue under the Act.
- **Component 3** would change the definition of a small business eligible for protection under the *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015* to a business entity with a turnover of up to \$10 million.
- **Component 4** would see unfair contract terms become illegal and incur civil penalties of up to a maximum of \$50 million.

Costing overview

The proposal would be expected to increase the fiscal and underlying cash balances by around \$558 million over the 2022-23 Budget forward estimates period. This is entirely driven by an increase in non-taxation revenue.

A breakdown of the financial implications (including separate PDI tables) over the period to 2032-33 is provided at Attachment A.

There are considerable uncertainties associated with this costing. The Parliamentary Budget Office (PBO) expects that an increase in maximum penalties under the Act would lead to an increase in the value of penalties. However, given that any changes to penalty amounts are at the discretion of the judges imposing them, this may not occur. Further, the base is highly volatile, reflecting the uncertainty inherent in estimating revenue from litigation.

The costing estimates are based on the penalties that were imposed between 2018-19 and 2020-21, but these may not be a reliable indicator of the penalties that may be imposed in the future. A further significant source of uncertainty is businesses’ behavioural responses to the proposal. The PBO expects increased compliance with the Act on account of this policy proposal.

Table 1: Financial implications (\$m)^{(a)(b)}

	2022-23	2023-24	2024-25	2025-26	Total to 2025-26
Fiscal balance	139.4	139.4	139.4	139.5	557.7
Underlying cash balance	139.4	139.4	139.4	139.5	557.7

(a) A positive number represents an increase in the relevant budget balance; a negative number represents a decrease.

(b) PDI impacts are not included in the totals.

Key assumptions

The PBO has made the following assumptions in costing this proposal.

Component 1

- The distribution of penalties imposed between 2018-19 and 2020-21 are representative of penalties that would be imposed in the future.
- Penalty amounts would increase proportionately to the increase in maximum penalties.
- Businesses would be expected to respond to the proposal by increasing their compliance with the Act, resulting in fewer cases being prosecuted by the ACCC and a decrease in the total value of penalties that would otherwise be expected to be imposed.
 - The expected total volume of penalties imposed would decrease by 50% as a result of increased business compliance.
- The value of the increased penalties would be expected to remain constant over the period to 2032-33.

Component 2

- There would not be a behavioural response to this component.
- The average number of penalty units imposed each year in the absence of this component would be equal to the annual average of the penalty units for specified infringement notices over the period from 2018-19 to 2020-21.

Component 3

- The change in the definition of a small business eligible for protection under *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015* would not materially affect the overall number of complaints administered by the ACCC.
 - Despite the proposed change to the definition of a small business, the increase in protected businesses is relatively small compared to the number currently covered.

Component 4

- The introduction of a penalty framework to apply to findings of unfair contract terms would act as a significant deterrent for businesses.
 - Given the current low number of cases progressing through the courts in the absence of a penalty framework, the potential penalty would act as further motivation for businesses to reach an agreement with the ACCC outside of court and thus is unlikely to raise a significant amount of revenue.

- For all components, the PBO assumes that the necessary legislation is passed in order to enable the proposal to be implemented from 1 July 2022.

Methodology

Component 1

- The estimates for Component 1 are based on ACCC data on penalties that were imposed over the period from 2018-19 to 2020-21.
- The total annual value of penalties was estimated by applying the assumed increases in penalty amounts, calculating the total annual average and then applying the assumed behavioural response of businesses.
- The financial impact of this component was then calculated by subtracting the total penalty revenue included in the current budget base from the total value of penalties as calculated under the proposal.

Component 2

- The estimates for Component 2 were estimated by calculating the difference between the baseline and the proposed value of penalty units for the specified infringement notices.
- The baseline value for each year was based on the annual average value of total penalty units imposed for the specified infringement notices during the period between 2018-19 and 2020-21, including the impact of triannual indexation of the value of penalty units.
- The proposed value was calculated by increasing the number of infringements the ACCC can issue, as specified in the request.

Component 3

- Component 3 would not be expected to have any financial implications based on the PBO's assessment that Component 3 does not significantly change the number of businesses covered by *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015*.

Component 4

- Component 4 would result in increased compliance with existing rules and most unfair contract term cases not proceeding to court, and therefore would have immaterial financial implications.

Financial implications were rounded consistent with the PBO's rounding rules as outlined on the PBO Costings and budget information webpage.¹

Data sources

The ACCC provided data on the number and value of civil penalties imposed under the *Competition and Consumer Act 2010* as a result of prosecutions by the ACCC over the period 2014-15 to 2020-21.

The Department of the Treasury provided economic parameters as at the Pre-election Economic and Fiscal Outlook 2022.

¹ https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Budget_Office/Costings_and_budget_information

Attachment A – Strengthening Competition to Ease Cost of Living Pressures – financial implications

Table A1: Strengthening Competition to Ease Cost of Living Pressures – Fiscal and underlying cash balances (\$m)^(a)

	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	Total to 2025-26	Total to 2032-33
Non – tax revenue													
<i>Component 1</i>	138.0	138.0	138.0	138.0	138.0	138.0	138.0	138.0	138.0	138.0	138.0	552.0	1,518.0
<i>Component 2</i>	1.4	1.4	1.4	1.5	1.5	1.5	1.6	1.6	1.6	1.7	1.7	5.7	16.9
<i>Component 3</i>	-	-	-	-	-	-	-	-	-	-	-	-	-
<i>Component 4</i>	..	..	..	..	..	..	..	..	..	..	..	..	..
Total (excluding PDI)	139.4	139.4	139.4	139.5	139.5	139.5	139.6	139.6	139.6	139.7	139.7	557.7	1,534.9

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.

.. Not zero but rounded to zero.

- Indicates nil.

Table A2: Strengthening Competition to Ease Cost of Living Pressures – Memorandum item: Public Debt Interest (PDI) impacts – Fiscal and underlying cash balances (\$m)^{(a)(b)}

	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	Total to 2025-26	Total to 2032-33
Fiscal balance	1.6	4.8	8.1	11.4	15.0	19.0	23.4	28.2	33.5	39.3	46.7	25.9	231.0
Underlying cash balance	1.4	4.4	7.7	11.0	14.6	18.5	22.8	27.6	32.9	38.6	45.8	24.5	225.3

(a) As this table is presented as a memorandum item, these figures are not reflected in the totals above. This is consistent with the approach taken in the budget where the budget impact of most measures is presented excluding the impact on PDI. If the reader would like a complete picture of the total aggregate, then these figures would need to be added to the figures above. For further information on government borrowing and financing please refer to the PBO's online budget glossary².

(b) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.

² [Online budget glossary – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au/online-budget-glossary)