



### Double the value of corporate penalties for misuse of market power

Party: Australian Greens

#### Summary of proposal:

The proposal would double the value of penalties corporations face for the misuse of market power. The proposal would commence from 1 July 2022.

## Costing overview

The proposal would be expected to increase the fiscal and underlying cash balances by around \$156 million over the 2022-23 Budget forward estimates period. This is driven by an increase in non-taxation revenue.

The proposal would have an ongoing impact beyond the 2022-23 Budget forward estimates period. A breakdown of the financial implications (including separate public debt interest (PDI) tables) over the period to 2032-33 is provided at Attachment A.

There are considerable uncertainties associated with this costing. 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 2014-15 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 corporations' behavioural responses to the proposal. The Parliamentary Budget Office (PBO) expects increased compliance on account of this policy proposal.

**Table 1: Financial implications (\$m)<sup>(a)(b)</sup>**

	2022-23	2023-24	2024-25	2025-26	<b>Total to 2025-26</b>
Fiscal balance	37.4	38.5	39.6	40.6	<b>156.1</b>
Underlying cash balance	37.4	38.5	39.6	40.6	<b>156.1</b>

(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.

- The baseline penalty in 2021-22 is based on the linear projection of competition related penalties imposed on corporations between 2014-15 and 2020-21. From 2022-23 penalties would be expected to grow in line with CPI.
- All penalty amounts would double. For example, the current maximum penalties for breaches of Part IV of the *Competition and Consumer Act 2010* will be the greater of:
  - \$10,000,000.

- If Court can determine "reasonably attributable" benefit obtained, 3 times that value.
- If Court cannot determine benefit, 10% of annual turnover in preceding 12 months.
- Under the proposal, the maximum penalties will be the greater of:
  - \$20,000,000.
  - If Court can determine "reasonably attributable" benefit obtained, 6 times that value.
  - If Court cannot determine benefit, 20% of annual turnover in preceding 12 months.

(The above is an example only and does not include all the legislations and penalties a corporation can face for the misuse of market power.)
- The expected total volume of penalties imposed would decrease by 10% as a result of increased business compliance.

## Methodology

- The estimates are based on ACCC data on competition related penalties that were imposed over the period from 2014-15 to 2020-21.
- The total annual value of penalties was estimated by applying the assumed increases in penalty amounts, and then applying the assumed behavioural response of businesses.
- The financial impact of this component was then calculated by subtracting the total value of penalties as calculated under current policy from the total value of penalties as calculated under the proposal.

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

## 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 Fiscal Outlook 2022*.

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<sup>1</sup> [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Budget\\_Office/Costings\\_and\\_budget\\_information](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Budget_Office/Costings_and_budget_information)

## Attachment A – Double the value of corporate penalties for misuse of market power – financial implications

**Table A1: Double the value of corporate penalties for misuse of market power – Fiscal and underlying cash balances (\$m)<sup>(a)</sup>**

	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
<b>Revenue</b>													
<i>Administered non-tax</i>	37.4	38.5	39.6	40.6	41.6	42.6	43.6	44.7	45.8	47.0	48.2	156.1	469.6
<b>Total (excluding PDI)</b>	<b>37.4</b>	<b>38.5</b>	<b>39.6</b>	<b>40.6</b>	<b>41.6</b>	<b>42.6</b>	<b>43.6</b>	<b>44.7</b>	<b>45.8</b>	<b>47.0</b>	<b>48.2</b>	<b>156.1</b>	<b>469.6</b>

(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.

**Table A2: Double the value of corporate penalties for misuse of market power – Memorandum item: Public Debt Interest (PDI) impacts – Fiscal and underlying cash balances (\$m)<sup>(a)(b)</sup>**

	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
<i>Fiscal balance</i>	0.4	1.3	2.2	3.2	4.2	5.4	6.8	8.3	10.0	11.9	14.2	7.1	67.9
<i>Underlying cash balance</i>	0.4	1.2	2.1	3.1	4.1	5.3	6.6	8.1	9.8	11.6	13.9	6.8	66.2

(a) As this table is presented as a memorandum item, these figures are not reflected in the totals in the table 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 glossary<sup>2</sup>.

(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.

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