



Policy costing

Fairer markets	
Party:	Australian Labor Party
Summary of proposal: The proposal has seven components. <ul style="list-style-type: none">• Component 1: Increase maximum penalties under the <i>Competition and Consumer Act 2010</i> (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: Increase the litigation budget of the Australian Competition and Consumer Commission (ACCC) by \$24.5 million per year.• Component 3: Triple the number of penalty units for infringement notice penalties that the ACCC can issue under the Act.• Component 4: Change the definition of a small business eligible for protection under the <i>Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015</i> to a business entity with a turnover of up to \$10 million.• Component 5: Unfair contract terms will become illegal and incur civil penalties of up to a maximum of \$50 million.• Component 6: Provide \$0.5 million in 2019-20 and then \$1 million per year thereafter to create a Competition and Growth Taskforce.• Component 7: Provide \$1 million per year over the 2019-20 Budget forward estimates period, to facilitate the review of mergers that have occurred in concentrated markets, or have previously raised regulator concerns or enforceable undertakings to evaluate the competition and consumer outcomes of the merger, and the broader public interest. The proposal would have effect from 1 July 2019.	

Costing overview

This proposal would be expected to increase both the fiscal and underlying cash balances by \$446.5 million over the 2019-20 Budget forward estimates period. This reflects an increase in revenue of \$552.0 million and an increase in departmental expenses for the ACCC of \$105.5 million.

A breakdown of the financial implications of this proposal over the 2019-20 Budget forward estimates period is included at [Attachment A](#). The proposal would be expected to have an ongoing impact beyond the 2019-20 Budget forward estimates period.

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 2014-15 and March 2019, but these may not be a reliable indicator of the penalties that would 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)}

	2019–20	2020–21	2021–22	2022–23	Total to 2022–23
Fiscal balance	114.5	114.0	114.0	114.0	446.5
Underlying cash balance	114.5	114.0	114.0	114.0	446.5

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

(b) Figures may not sum to totals due to rounding.

Key assumptions

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

Component 1 and 2

- The distribution of penalties imposed between 2014-15 and March 2019 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 value of penalties imposed would decrease by 50 per cent as a result of increased business compliance.
- The value of the increased penalties would be expected to remain constant over the period to 2029-30, which is consistent with the ACCC forecasts as at the 2019 Pre-election Economic and Fiscal Outlook.
- The proposed increase in the ACCC's litigation budget would not be expected to result in a material increase in the total value of penalties imposed on businesses as it depends on identifying additional cases for litigation and the outcome of court cases.

Component 3

- 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 2017-18 to 2018-19.

Component 4 and 5

- 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 overall number of businesses covered by *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015* would not be expected to change significantly.
- 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.

Methodology

Component 1

The estimates for Component 1 are based on ACCC data on penalties that were imposed over the period from 2014-15 to March 2019. The total annual value of penalties was estimated by applying the assumed increases in historical 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 are as specified in the proposal.

Component 3

The estimates for Component 3 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 2017-18 and 2018-19, including the impact of triannual indexation of the value of penalty units.

The proposed value was calculated by increasing the baseline value as specified.

Component 4

Component 4 would not be expected to have any financial implications based on the PBO's assessment that Component 4 does not significantly change the number of business covered by *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015*.

Component 5

Component 5 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.

Component 6 and 7

The estimates for Component 6 and 7 are as specified in the proposal.

Revenue estimates for Component 3 have been rounded to the nearest \$100,000. All other revenue estimates have been rounded to the nearest \$10 million.

All expense estimates have been rounded to the nearest \$100,000.

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 2018-19.

The Treasury and the Department of Finance, 2019. *2019 Pre-election Economic and Fiscal Outlook*, Canberra: The Treasury and the Department of Finance.

Attachment A – Fairer markets – financial implications

Table A1: Fairer markets – Fiscal and underlying cash balances (\$m)^{(a)(b)}

	2019–20	2020–21	2021–22	2022–23	Total to 2022–23
Revenue					
<i>Component 1 – Increase maximum penalties under the Competition and Consumer Act 2010</i>	140	140	140	140	550.0
<i>Component 3 – Triple the number of penalty units for infringement notice penalties that the ACCC can issue</i>	0.5	0.5	0.5	0.5	2.0
<i>Component 4 – Change the definition of a small business eligible for protection</i>	-	-	-	-	-
<i>Component 5 – Unfair contract terms will become illegal and incur civil penalties</i>
Total – revenue	140.5	140.5	140.5	140.5	552.0
Expenses					
<i>Departmental</i>					
<i>Component 2 – Increase the litigation budget of the ACCC</i>	-24.5	-24.5	-24.5	-24.5	-98.0
<i>Component 6 – Create a Competition and Growth Taskforce</i>	-0.5	-1.0	-1.0	-1.0	-3.5
<i>Component 7 – Review mergers to evaluate the competition and consumer outcomes</i>	-1.0	-1.0	-1.0	-1.0	-4.0
Total – expenses	-26.0	-26.5	-26.5	-26.5	-105.5
Total	114.5	114.0	114.0	114.0	446.5

(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.

(b) Figures may not sum to totals due to rounding.

.. Not zero but rounded to zero.

- Indicates nil.