

# CIVIL PENALTIES IN AUSTRALIA

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# Foreword

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Civil penalties are prolific throughout Australian legislation. Almost every practising lawyer encounters some aspects of the Australian law concerning civil penalties. But the Australian law of civil penalties is in a dire state. Australian jurisprudence has sometimes neglected the most fundamental point about civil penalties: they are punishment. If nothing else, that point ought to have been clear from the etymology of penalty, likely a variant of penalty and derived in part from the Latin *penalitas* or the French *pénalité*.

Underpinning some of the problems in the Australian law of civil penalties are related errors:

- a failure to recognise that the boundary between ‘criminal’ punishment and ‘civil’ punishment is illusory;
- repeated assertions that, unlike criminal punishment, the primary or only concern of ‘civil’ penalties is deterrence; and
- assertions that unlike in criminal punishment ‘there is no place for a “notion of proportionality” ... in a civil penalty regime’.

The authors of this outstanding work, *Civil Penalties in Australia*, Matthew Peckham, Cam Truong KC, Ian Latham, and Amanda Storey, recognise from the outset that civil penalties are punishment. They acknowledge the arguably unsuitable distinction between criminal and civil punishment. And they recognise the role of proportionality-related considerations such as parity and totality. But they have not attempted to upset the apple cart by advocating for wholesale rethinking of some core aspects of the law of civil penalties. Instead, they have done something that is immensely valuable for all students and practitioners in this area. The authors have provided a beautifully structured, clear, and comprehensive work which provides a microscopic analysis of the law of civil penalties in Australia, warts and all, without losing sight of the principles which bind this area of law together.

In carefully navigating the detail of the law of civil penalties in Australia with consistent understanding of the basic nature and operation of penalties, the authors of *Civil Penalties in Australia* avoid judicial euphemisms such as ‘protection’ to describe the punishment imposed by civil penalty orders. They recognise the ubiquity of such punitive orders including: money payments of penalties; orders for loss of office or reduction in rank; forfeiture orders; publicity and compliance orders; and even ecclesiastical censure. Their consistent appreciation of the principles with which all of those penalties are concerned permits them to notice where differences in context can explain different rules and where those differences in context cannot.

There are few areas of law in Australia without some form of civil penalty. *Civil Penalties in Australia* is an invaluable work that will be of enormous utility to any

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student, practitioner or judge who seeks to navigate the difficult, sometimes inconsistent but ubiquitous operation of these principles of so-called non-criminal penalties in Australia.

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*25 July 2025*