

Book Review

Civil Penalties in Australia by Matthew Peckham, Cam Truong KC, Ian Latham and Amanda Storey (2025) LexisNexis, 464 pp, ISBN 9780409358476

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While far from new,¹ civil penalties are increasingly central features of the regulatory landscape.² It is therefore timely that a textbook be devoted to the subject. Accordingly, *Civil Penalties in Australia* by Matthew Peckham, Cam Truong KC, Ian Latham and Amanda Storey ('*Civil Penalties*') is a welcome contribution to the literature.³ The book aims to consolidate doctrine for practitioners representing parties to civil penalty proceedings.

Civil Penalties navigates complex terrain through a clear and intuitive structure. The introductory chapter canvasses the general principles of civil penalties in Australian law. This reveals how different issues within the law of civil penalties fit together, which is useful for grasping some of the more intricate analyses that follow. Having introduced the law of civil penalties, chapters are dedicated to the following topics:

- major civil penalty regimes;
- statutory investigations;
- the liability phase of a civil penalty proceeding;
- the penalty phase of a civil penalty proceeding;
- relief other than monetary penalties;
- evidentiary issues in civil penalty proceedings;
- infringement notices;
- attributing conduct and liability; and
- private litigation and civil penalty proceedings.

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Any views are the author's own.

¹ See, eg, *R v Associated Northern Collieries* (1910) 11 CLR 738.

² *Director, Fair Work Building Industry Inspectorate v Commonwealth* (2015) 258 CLR 482, 494–5 [23]–[24] ('*Agreed Penalties Case*').

³ Matthew Peckham, Cam Truong KC, Ian Latham and Amanda Storey, *Civil Penalties in Australia* (LexisNexis, 2025) ('*Civil Penalties*').

Importantly, the book bears broad relevance to all Australian civil penalty jurisdictions — it ‘is intended to be regime-agnostic’.⁴ Yet the authors do not seek to be exhaustive. The scope is expressly and reasonably limited to the major regulators and regimes: the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, and the Fair Work Ombudsman. Procedural analysis is confined to the central traits common to civil penalty regimes. However, because of the many similarities between different regimes, much can be drawn from these discussions that is applicable to the broader civil penalty context.

Civil Penalties occupies an important place in the literature on this subject. It appears to be only the second book dedicated to the Australian law of civil penalties. It follows a 2023 edited collection of scholarly papers exploring doctrinal and theoretical puzzles in this field.⁵ That both books have been published so recently demonstrates that this is a blossoming area of research and there remains much scope for exploration. What distinguishes *Civil Penalties* from *The Law of Civil Penalties* is its orientation to practitioners rather than scholars, and its cohesive organisation as a textbook rather than a collection of papers. Other related textbooks, such as Arie Freiberg’s *Regulation in Australia*,⁶ have a broader focus unconfined to civil penalties and do not seek to assist practitioners acting in civil penalty proceedings. The authors of *Civil Penalties*, therefore, have made a significant contribution to the existing literature.

To speak of the virtues of *Civil Penalties*, Justice Edelman’s praise in the Foreword befits this ‘outstanding’ book: it is a ‘beautifully structured, clear, and comprehensive work’.⁷ One reason for this is the authors’ intuitive grasp of the questions that are on the tips of practitioners’ tongues, such as ‘how can a client challenge this regulator’s action?’ or ‘what is the source of the regulator’s power?’. These questions are anticipated and dealt with swiftly and directly. One does not, therefore, need to constantly flick between chapters to satisfactorily deal with a problem, evidencing the thoughtful organisation of the book. The same care is taken with expression: the prose is readable, clear, and uncluttered.

A major achievement of the authors is the doctrinal consolidation they have undertaken. As each chapter scrutinises a distinct aspect of the law of civil penalties, the authors offer a clear and accessible synthesis of important case law, even drawing together what can sometimes be fragmented lines of authority. For example, the authorities concerning the interaction between pleading obligations and penalty privilege are often viewed as disjointed and sometimes even talk past each other.⁸ Yet *Civil Penalties* deftly summarises these authorities, observes the tensions between them, and offers guidance on how to navigate those tensions.⁹ Accordingly, the textbook provides an important resource for practitioners seeking a précis of the case law on an issue.

Litigating civil penalty disputes presents distinctive challenges for practitioners. As such, another important strength of the text is that it looks beyond the law and distils practical tips for practitioners, no doubt drawing on the authors’ experience as barristers. For instance, the authors offer strategic guidance for an examinee attending an oral examination in a civil penalty investigation, such as ‘[a]sk to be shown documents referred

⁴ Ibid xvii.

⁵ Deniz Kayis, Eloise Gluer and Samuel Walpole (eds), *The Law of Civil Penalties* (Federation Press, 2023).

⁶ Arie Freiberg, *Regulation in Australia* (Federation Press, 2nd ed, 2025).

⁷ Justice James Edelman, ‘Foreword’ in Matthew Peckham, Cam Truong KC, Ian Latham and Amanda Storey, *Civil Penalties in Australia* (LexisNexis, 2025) v, v.

⁸ See, eg, *Australian Securities and Investments Commission v Mining Group Projects Ltd* (2007) 164 FCR 32 cf *MacDonald v Australian Securities and Investments Commission* (2007) 73 NSWLR 612.

⁹ *Civil Penalties* (n 3) 143–8 [4.37]–[4.54].

to by the inspector or examiner' and '[b]e aware of any process for the claiming or preservation of any privilege against self-incrimination or self-exposure to penalty'.¹⁰

As a practitioner-oriented textbook, some complex debates in the burgeoning field of civil penalties are adverted to but not examined in any detail. Foremost, there is still a wealth of doctrinal and theoretical work to be done on the nature of the civil penalty itself. After all, as the authors acknowledge from the outset, civil penalties are unusual creatures.¹¹ They involve an awkward marriage between civil law and punishment that has few analogues. As Justice Edelman notes in his Foreword, this has led to a cognitive dissonance where 'Australian jurisprudence has sometimes neglected the most fundamental point about civil penalties: they are punishment'.¹² How to conceptualise the relationship between civil law and punishment remains an open and thorny question, but (appropriately) it is not one by which the authors allow themselves to be sidetracked. Indeed, that would obstruct the aim of furnishing practitioners with accessible doctrinal guidance. But on this and other contested issues in the law of civil penalties, there remains much untraversed territory. Scholars interested in these questions may find the treatment thin.

In conclusion, while it may be said that 'the Australian law of civil penalties is in a dire state',¹³ this book is a welcome account of the state of the law. Practitioners will benefit from the sharp synthesis of the central authorities, practical guidance and careful organisation. These accomplishments represent significant steps forward in the civil penalties literature. The book exposes many unanswered questions that will continue to provoke practitioners and scholars alike.

¹⁰ Ibid 106 [3.57].

¹¹ Ibid 3 [1.3]–[1.6].

¹² Edelman (n 7) v.

¹³ Ibid.