

Cartel Update

Criminal offence for cartel conduct from April 2021

April 2019

The Commerce (Criminalisation of Cartels) Amendment Bill received royal assent on 8 April 2019 and will come into effect on 8 April 2021. This means in two years' time, a breach of the cartel laws could result in **jail time** as well as substantial fines.

Most people think of cartels as only affecting "big, bad" business (and Columbian drug smugglers!) but this is wrong. Cartel laws do not discriminate between large, well-resourced corporate entities and small "mum and dad" businesses. Cartel laws affect any business that enters into an agreement or arrangement with a competitor. This potentially includes suppliers of goods and services, resellers, joint venture parties and franchises.

WHAT ARE THE CURRENT CARTEL LAWS?

Readers of our [cartel updates](#) will recall that the cartel amendments to the Commerce Act were passed into law in a rush before the last election. These prohibit provisions or arrangements *between competitors* that have the purpose, effect or likely effect of **fixing prices, allocating markets, or restricting output**.

Breaches of the cartel laws currently only incur civil penalties (i.e. severe fines but no jail time). Once the Bill is in force, individuals could also face jail time.

WHAT IS THE NEW LAW?

Criminal offence

The Bill introduces a criminal offence from 8 April 2021 for cartel conduct where the person intends to engage in either price fixing, allocating markets or restricting output. An intention to break the law is, of course, not required. The offence carries penalties of:

- **Individuals:** Up to **7 years** imprisonment for individuals or a fine of up to **\$500,000**, or both.
- **Corporates:** A fine of up to **\$10 million** or a higher penalty based on commercial gain from the cartel arrangement or the person's turnover.

The government's reasons for criminalisation include bringing our regime in line with key trading partners and promoting detection and deterrence of cartel behaviour.

Defence

There is a defence if the person believed that one of the specified exceptions applied to the cartel conduct. However this defence only applies if it is based on reasonable grounds, not if it is based on ignorance, mistake or any matter of law.

Cartel Prosecutors Panel

Prosecutions under the new criminal offence can only be made by the new Cartel Prosecutors Panel which the Solicitor-General is required to appoint. The purpose of this panel is to ensure that any criminal prosecutions for cartel conduct are taken "speedily".

WHY DO I NEED TO KNOW?

This will affect your business, your board and your staff. It is important that businesses take the time to understand the cartel laws – and take action if the cartel provisions apply.

As individuals can be personally liable (and their actions can lead to company liability) it is very important that senior management/directors ensure their managers and staff understand the cartel laws.

WHAT DO I DO?

If you have not already updated your compliance procedures, trained your staff and checked your existing contracts to ensure you do not have any cartel provisions, then you need to prioritise this now. You should also check your D&O and statutory liability insurance policies to see what cover (if any) will apply going forward.

If you need help, we can assist with your compliance, training and agreement reviews. For further information or to discuss how cartel laws may impact on your business, please call or email one of the Jackson Russell business lawyers listed.

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Disclaimer: The information contained in this update is a general overview and is not legal advice. It is important that you seek legal advice that is specific to your circumstances.

