

Illegal cartels face 10 years jail



Business leaders involved in major cartels will for the first time face up to 10 years behind bars following recent changes to the Trade Practices Act.

As foreshadowed in *ACCC Update* last year, federal parliament passed legislation in June to introduce criminal sanctions for serious cartel conduct. Civil penalties will continue to be used for less serious matters and those not suitable for criminal prosecution.

These changes mean the ACCC will be able to refer serious cartel conduct to the Commonwealth Director of Public Prosecutions for possible criminal prosecution. As well as jail time, the criminal cartel offence carries penalties of up to \$220 000 for individuals and \$10 million (or three times the gain) for corporations. It also means Australia now has one of the toughest legislative deterrents in the world against cartels, bringing us into line with many of our major trading partners, including the United States, the United Kingdom and Canada.

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In anticipation of the new regime beginning, executive general manager of the ACCC’s Enforcement and Compliance Division Marcus Bezzi told the Hodgkiss Competition Law Conference in May that where appropriate, the ACCC would always seek to take serious cartel cases to court as criminal, rather than civil, matters.

What I can say for serious cartel investigations, is that if the tests under the Prosecution Policy of the Commonwealth are satisfied, it should be clear to everyone that the ACCC will always support a criminal prosecution.

For the legal representatives of people who are being investigated this means that there will be no point trying to negotiate resolution of a serious cartel matter in the way that may have been done when civil proceedings were the only available option. The ACCC will simply not negotiate with you when a criminal prosecution is available for such conduct. We will never allow the prospect of a criminal prosecution to be traded away by an attractive offer to resolve the matter through civil penalty proceedings and the payment of a large penalty.

In addition to hefty penalties, the changes to the legislation will also enable telephone interception to be used for the first time for suspected criminal cartels.

Changes are also to be made to the existing civil prohibitions on cartel conduct. A new civil cartel prohibition will operate in parallel with the criminal cartel offence. Both proscribe the same varieties of cartel conduct—price fixing, output restrictions, customer/supplier/territory allocation and bid rigging. The criminal offence will be more difficult to prove, not the least because of the need to obtain a unanimous jury verdict.

The Trade Practices Act now contains protections such as statutory bars—provisions that, among other things, ensure a person criminally convicted for involvement in a cartel cannot subsequently face a civil pecuniary penalty for the same conduct.

More information about the changes and the ACCC’s immunity policy for cartel members who confess their involvement is available at www.accc.gov.au or by calling 1300 302 502.

