

The Criminalisation of Cartel Offences: what it means for your company

At Cooper Grace Ward's Breakfast Brief on 11 May 2010, Susan Carr, Acting Queensland General Manager of Enforcement Operations for the Australian Competition and Consumer Commission (ACCC), discussed the recent reforms to the Trade Practices Act 1974 (Cth) (TPA).

Ms Carr explained that a cartel exists when businesses, instead of competing, agree to act together in a way that defeats competition and which is designed to increase the profits of cartel members while maintaining the illusion of competition.

To form a cartel, the parties must make or give effect to a contract, arrangement or understanding that gives effect to cartel conduct. Cartel conduct includes:

- price fixing;
- restricting outputs in production or the supply chain;
- allocating customers, suppliers or territories; and
- bid rigging.

Serious cartel conduct can now result in criminal penalties under the Criminal Code Act 1995 (Cth). To prove criminal liability, the fault elements of knowledge, belief, or, intention must be evidenced.

Much harsher penalties are now being levelled at perpetrators of conduct that amounts to the formation of a cartel, which could include \$10 million fines and up to 10 years imprisonment.

To go hand in hand with its tougher approach to cartels, the ACCC now has heightened investigative powers including:

- telephone interception and surveillance device warrants (to be carried out by the Australian Federal Police only in the case of criminal cartel conduct);
- the strengthening of search warrant powers, particularly in relation to the seizure of electronic information; and
- documents produced to the ACCC by an individual can now be used against that individual in criminal proceedings.

Applications for immunity from civil and criminal cartel penalties in certain (amended) circumstances remain available to an individual, who first reports the conduct to the ACCC, is not a ring leader and who fully and frankly cooperates. The conditions relating to this immunity are outlined on the ACCC website.

We would like to again extend our sincere thanks to Susan Carr for her presentation and insight into these new laws.