



# MEDIA RELEASE

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### **Up to 10 years jail for serious cartel conduct**

Individuals who partake in serious cartel conduct now face jail terms of up to 10 years under a Bill passed by the Senate last night.

The Rudd Government has fulfilled another key election commitment with the passing of the *Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008*.

The previous Government promised to criminalise serious cartel conduct but never delivered.

The Government appreciates the unanimous support of the Senate for this important pro-competitive legislation.

I acknowledge the path-breaking work of my predecessor, Chris Bowen, in bringing this Bill before the Senate.

This Bill amends the *Trade Practices Act 1974* to introduce criminal and civil sanctions specifically targeting serious cartel conduct.

Individuals and companies that fix prices or reduce choice by distorting the ordinary flow of competition now face some of the stiffest penalties in the world for this type of behaviour.

The Government has introduced a maximum jail term of 10 years for individuals to send a clear message about cartel conduct.

Anyone engaging in serious cartel conduct also faces fines of up to \$220,000 for individuals and \$10 million for corporations under the tough new legislation.

The Federal Government's Bill will also enable telephone interception powers to be used as an investigatory tool in relation to the criminal offences.

Price fixing is essentially theft and consumers are the ones who suffer.

This legislation demonstrates the Government's ongoing commitment to strengthen laws promoting competition.

Strong, lawful competition is a vital means of ensuring that consumers get the best product or service for the lowest possible price.

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## KEY ELEMENTS OF CARTEL LEGISLATION

### Elements of the Criminal Offences

The Bill makes it an offence for a corporation to make or give effect to a contract, arrangement or understanding between competitors that contains a provision to fix prices, restrict outputs, divide or share markets, or rig bids.

The Government has decided that the offences should no longer include the words 'with the intention of dishonestly obtaining a benefit', and instead apply fault elements under the Criminal Code (intention, and knowledge or belief) to the offences.

This will ensure that the burden of proof is high enough to catch only really serious offenders but also ensures the fault element is not used as an escape clause in the law.

### Criminal Penalties

The Government has introduced a maximum jail term of 10 years to send a clear message about cartel conduct. The maximum penalties for the offences are:

- **for an individual** – a maximum term of imprisonment of 10 years and/or a maximum fine of \$220,000; and
- **for a corporation** – a fine that is the greater of \$10 million or three times the value of the benefit from the cartel, or where the value cannot be determined, 10 per cent of annual turnover.

The penalty for individuals brings Australia into line with penalties in the United States.

### Parallel Civil Prohibitions

With the removal of the dishonesty element from the criminal offences, the Government will introduce a parallel scheme of civil prohibitions on serious cartel conduct that contain the same elements as the new criminal offences.

The differentiating factors are that the criminal offences require proof of the elements of the offence beyond reasonable doubt, and that certain 'fault' elements are automatically applied under the Commonwealth Criminal Code.

As parallel criminal and civil prohibitions could give rise to double jeopardy concerns, the Government will also enable civil proceedings to be postponed until criminal proceedings are completed. If the defendant is convicted, the civil proceedings would be terminated.

### Cartel Provisions

The Government has changed the tests that apply in determining whether a provision of a contract, arrangement or understanding qualifies as a cartel provision and is prohibited.

For a breach comprising price fixing, the test now provides that the provision must have had the purpose, effect or likely effect, of directly or indirectly fixing prices.

For a breach comprising other forms of serious cartel conduct (output restrictions, market sharing and bid rigging), the test now provides that the provision must have had the purpose of directly or indirectly restricting outputs, sharing markets or rigging bids.

These amendments bring the tests in line with tests that apply under the existing civil prohibitions in the *Trade Practices Act 1974* upon which the new cartel prohibitions have been modelled.

### **Telephone Interception Powers**

Cartels are generally covert arrangements. Discovery and proof of the existence of a cartel is more difficult than other forms of corporate misconduct, justifying such powers to penetrate the cloak of secrecy.

The Government has therefore decided to amend the *Telecommunications (Interception and Access) Act 1979* to enable telecommunications interception powers to be used in addition to other available tools to investigate breaches of the cartel offence.

Increasing the penalty for individuals to a 10-year jail term brings the cartel offences within the threshold requirements for accessing such powers.

### **Joint Venture Defence**

The legislation provides a defence to criminal and civil actions if:

- a. the parties to the contract are, or will be, carrying on a joint venture for the production or supply of goods or services; and
- b. the cartel provision is for the purposes of that joint venture.

Government amendments to the legislation also ensure that joint venture parties that intend and reasonably believe that the arrangement or understanding constituted a joint venture contract will fall within the scope of the defence.

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