

# Cartel criminalisation

## Frequently asked questions

### Where does cartel criminalisation come from?

The Commerce (Criminalisation of Cartels) Amendment Act 2019 received Royal assent on 8 April 2019.



### When does the law come into force?

8 April 2021.

### What does it mean?

Cartel conduct is currently dealt with as a civil offence under the Commerce Act. Penalties can be imposed on a business or an individual: up to \$500,000 for an individual and up to \$10 million, three times commercial gain or 10% of turnover per year per breach for businesses.

The new criminal offence allows criminal penalties to be imposed against individuals and businesses.

The new criminal penalties are up to 7 years' imprisonment for individuals and/or a fine of up to \$500,000. The fines for businesses are the same under the civil and criminal regime.



Read more about [avoiding anti-competitive behaviour](#).

### What do I have to do to prepare?

If you are unsure whether you or your business are involved in a cartel, we recommend you seek legal advice.

If you believe that you have entered into a cartel, then you may be able to seek immunity from prosecution by following the process in our [Cartel Leniency Policy and Guidelines](#). Subject to certain conditions in the policy, as a general rule the first company or individual to provide the Commission with evidence of a cartel will be granted immunity.



### What defences are available?

All of the current exceptions under the Commerce Act.

Further, the new section 82C of the Commerce Act provides that it is a defence to the new criminal offence if the defendant believed on reasonable grounds that one or more of the exceptions currently available under the Commerce Act applied. However, the defence does not apply if the defendant's belief is based on ignorance or mistake, of any matter of law.

The Commission may still take civil proceedings against the defendant even if this defence applies.



### Will the Commission have new powers?

Yes, the Commission will have access to powers under the Search and Surveillance Act which may only be used in relation to suspected offences that are punishable by a term of imprisonment of 7 years or more.

The Commission will be able to ask the appropriate agency to apply for surveillance device warrants ('wiretaps') by proving to a Court that there are reasonable grounds to suspect the cartel offence has been, is, or will be committed, and, that the use of a warrant will obtain relevant evidence.



### How will the Commission decide whether to start a civil or a criminal investigation?

This will be outlined in our *Enforcement Response Guidelines*.

### Will the Commission wait for a 'slam dunk' case for its first criminal cartel prosecution or will it use its new powers from the beginning?

No, all decisions on prosecutions will be made in accordance with our [Enforcement Response Guidelines](#), and ultimately the Solicitor General's Prosecution Guidelines which require evidential sufficiency and for the prosecution to be in the public interest.



### Can I be sent to prison for a cartel I entered into before 8 April 2021?

Yes, but only if you are still giving effect to that cartel agreement after 8 April 2021.

If you have a question not covered here, please send your queries to [communications@comcom.govt.nz](mailto:communications@comcom.govt.nz)

