

# DRAFT FOR CONSULTATION

## **Commerce (Cartels and Other Matters) Amendment Bill**

Government Bill

### **Explanatory note**

#### **General policy statement**

[To come.]

#### **Regulatory impact statement**

[To come.]

#### **Clause by clause analysis**

[To come.]

---



*Hon Simon Power*

## **Commerce (Cartels and Other Matters) Amendment Bill**

Government Bill

### **Contents**

	Page
1 Title	3
2 Commencement	4
3 Principal Act amended	4
<b>Part 1</b>	
<b>Amendments to principal Act</b>	
<i>Cartels</i>	
4 Interpretation	4
5 Application of this Act to conduct outside New Zealand	4
6 New heading and sections 30 to 33 substituted	4
<i>Cartel provisions</i>	
30 Prohibition on entering into or giving effect to cartel provision	5
30A Meaning of cartel provision	5
30B Additional interpretation relating to cartel provisions	6
30C Temporal application of prohibition on cartel provisions	7
31 Exemption for collaborative activity	7
32 Exemption relating to bid rigging	8
33 Exemption for joint buying and promotion agreements	8
7 New heading inserted	9

**Commerce (Cartels and Other Matters)  
Amendment Bill**

---

<i>Acquisitions by overseas persons</i>		
8	New sections 47A to 47D inserted	9
	47A Declaration relating to acquisitions by overseas persons	9
	47B Effect of declaration under section 47A	10
	47C Application for declaration	10
	47D Revocation of declaration	10
<i>Amendments relating to authorisations for restrictive trade practices</i>		
9	Effect of authorisation	11
10	When Commission may grant authorisation	11
11	Commission to prepare draft determination in relation to restrictive trade practices	11
<i>Clearance regime for collaborative activities</i>		
12	New sections 65A to 65D inserted	11
	65A Clearances relating to cartel provisions	11
	65B Effect of clearance under section 65A	12
	65C Procedures relating to clearances	12
	65D Revocation of clearances	12
<i>Amendment relating to clearance for business acquisitions</i>		
13	Commission may give clearances for business acquisitions	13
<i>Consequential amendment relating to cartels</i>		
14	Jurisdiction of High Court	13
<i>Consequential amendment relating to acquisitions by overseas persons</i>		
15	Lay members of High Court in certain cases	13
<i>Consequential amendment relating to cartels</i>		
16	Relationship between pecuniary penalty and criminal liability	13
<i>Defences in proceedings relating to cartels</i>		
17	Pecuniary penalties	14
<i>Consequential amendment relating to cartels</i>		
18	Body corporate not to indemnify certain persons in respect of pecuniary penalties	14

---

	<i>Excluding persons involved in cartels</i>	
19	Court may order certain persons to be excluded from management of body corporate	14
	<i>Restriction on exemplary damages</i>	
20	Exemplary damages for contravention of Part 2	15
	<i>Cartel offence</i>	
21	New section 82B inserted	15
	82B Offence relating to cartel provisions	15
	<i>Amendment relating to acquisitions by overseas persons</i>	
22	Pecuniary penalties	16
	<i>Attributing conduct</i>	
23	Conduct by servants or agents	17
	<i>Appeals relating to authorisations and clearances</i>	
24	Persons entitled to appeal	17
	<i>Increasing penalties</i>	
25	Offences	18
	<b>Part 2</b>	
	<b>Transitional clearance regime and consequential amendment</b>	
26	Purpose of this Part	18
27	Interpretation in this Part	18
28	Transitional clearances	19
29	Effect of clearance under section 28	20
30	Procedures relating to clearances under section 28	20
31	Revocation of clearances given under section 28	20
32	Appeals	20
33	Repeal of this Part	21
34	Consequential amendment to District Courts Act 1947	21

---

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Commerce (Cartels and Other Matters) Amendment Act 2011.

**2 Commencement**

- (1) This Act, except the provisions referred to in subsection (2), comes into force on the day on which it receives the Royal assent.
- (2) The following provisions (which amend the principal Act in relation to cartels) come into force on the day that is 12 months after the date on which this Act receives the Royal assent:
  - (a) section 4:
  - (b) sections 6 and 7:
  - (c) section 9:
  - (d) section 12:
  - (e) section 14:
  - (f) sections 16 to 19:
  - (g) section 21:
  - (h) section 24(3):
  - (i) section 34.

**3 Principal Act amended**

This Act amends the Commerce Act 1986.

**Part 1  
Amendments to principal Act***Cartels***4 Interpretation**

Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**cartel provision** has the meaning given in section 30A

“**collaborative activity** has the meaning given in section 31(2)”.

**5 Application of this Act to conduct outside New Zealand**

Section 4(3) is repealed.

**6 New heading and sections 30 to 33 substituted**

The heading above section 30 and sections 30 to 33 are repealed and the following heading and sections substituted:

*“Cartel provisions*

**“30 Prohibition on entering into or giving effect to cartel provision**

- “(1) No person may—
- “(a) enter into a contract or arrangement, or arrive at an understanding, that contains a cartel provision; or
  - “(b) give effect to a cartel provision.
- “(2) *See* section 80 for liability to a pecuniary penalty, and section 82B for criminal liability, for contravention of subsection (1).

**“30A Meaning of cartel provision**

- “(1) In this Act, **cartel provision** means a provision contained in a contract, arrangement, or understanding that has 1 or more of the following purposes:
- “(a) price fixing:
  - “(b) restricting output:
  - “(c) market allocating:
  - “(d) bid rigging.
- “(2) In relation to a contract, arrangement, or understanding referred to in subsection (1), **price fixing** means fixing, controlling, or maintaining, or providing for the fixing, controlling, or maintaining of,—
- “(a) the price for goods or services that any 2 or more of the parties to the contract, arrangement, or understanding supply or acquire in competition with each other; or
  - “(b) any discount, allowance, rebate, or credit in relation to goods or services that any 2 or more of the parties to the contract, arrangement, or understanding supply or acquire in competition with each other.
- “(3) In relation to a contract, arrangement, or understanding referred to in subsection (1), **restricting output** means preventing, restricting, or limiting—
- “(a) the production or likely production by any party to the contract, arrangement, or understanding of goods that any 2 or more of the parties to the contract, arrangement, or understanding supply or acquire in competition with each other; or

- “(b) the capacity or likely capacity of any party to the contract, arrangement, or understanding to supply services that any 2 or more of the parties supply or acquire in competition with each other; or
  - “(c) the supply or likely supply of goods or services, to any person or class of persons, that any 2 or more of the parties to the contract, arrangement, or understanding supply or acquire in competition with each other; or
  - “(d) the acquisition or likely acquisition of goods or services that any 2 or more of the parties to the contract, arrangement, or understanding supply or acquire in competition with each other.
- “(4) In relation to a contract, arrangement, or understanding referred to in subsection (1), **market allocating** means allocating between any 2 or more of the parties to the contract, arrangement, or understanding either or both of the following:
- “(a) persons or classes of persons to or from whom the parties supply or acquire goods or services in competition with each other:
  - “(b) the geographic areas in which the parties supply or acquire goods or services in competition with each other.
- “(5) In relation to a contract, arrangement, or understanding referred to in subsection (1) and section 32, **bid rigging** means restraining 1 or more of the parties to the contract, arrangement, or understanding from making a bid, or requiring a bid to be in accordance with the contract, arrangement, or understanding, where the parties to the contract, arrangement, or understanding are in competition with each other for the supply or acquisition of the goods or services to which the bid relates.
- “(6) In subsection (5) and section 32, **bid** includes—
- “(a) a tender; and
  - “(b) any step preliminary to making a bid, such as giving an expression of interest.

**“30B Additional interpretation relating to cartel provisions**

- “(1) In this Act, in relation to a cartel provision,—
- “(a) if a person is a party to a contract, arrangement, or understanding, each of the person’s interconnected bod-

ies corporate is taken to be a party to the contract, arrangement, or understanding; and

“(b) if a person (**person A**) or any of person A’s interconnected bodies corporate acquires or supplies goods or services in competition with another person (**person B**) or any of person B’s interconnected bodies corporate, person A is taken to acquire or supply those goods or services in competition with person B.

“(2) In this Act, in relation to a cartel provision, a reference to persons in competition with each other includes a reference to persons who, but for the cartel provision, would, or would be likely to, be in competition with each other in a market.

“**30C Temporal application of prohibition on cartel provisions**

“(1) The prohibition in section 30(1)(a) (against entering into a contract or arrangement, or arriving at an understanding, that contains a cartel provision) applies only to contracts, arrangement, or understandings that are entered into or arrived at after this section comes into force.

“(2) The prohibition in section 30(1)(b) (against giving effect to a cartel provision) applies only to conduct occurring after this section comes into force, but applies whether the contact, arrangement, or understanding that contains the cartel provision was entered into or arrived at before or after this section comes into force, and whether or not it has been suspended at any time.

“**31 Exemption for collaborative activity**

“(1) A person does not contravene section 30(1) if the person enters into a contract or arrangement, or arrives at an understanding, that contains a cartel provision, or gives effect to a cartel provision in a contract, arrangement or understanding, and—

“(a) the person and 1 or more other parties to the contract, arrangement, or understanding are involved in a collaborative activity; and

“(b) the cartel provision is reasonably necessary for the purpose of the collaborative activity.

“(2) In this Act, **collaborative activity** means an enterprise, venture, or other activity, in trade, that—

- “(a) is carried on in co-operation by 2 or more persons; and
- “(b) is not carried on for the dominant purpose of lessening competition.

**“32 Exemption relating to bid rigging**

A person does not contravene section 30(1) in relation to a cartel provision with a bid rigging purpose that is contained in a contract, arrangement, or understanding if, before the contract or arrangement is entered into, or the understanding is arrived at,—

- “(a) a party to the proposed contract, arrangement, or understanding advises the person running any bid to which it relates that—
  - “(i) the parties propose to enter into a contract, arrangement, or understanding that contains a provision that has a bid rigging purpose; and
  - “(ii) identifies the parties to the contract, arrangement, or understanding and the essential features of the cartel provision; and
- “(b) the person running the bid agrees that the parties may make a bid; and
- “(c) if the parties enter into the contract or arrangement, or arrive at the understanding, it does not differ materially from the contract, arrangement, or understanding described to the person running the bid.

**“33 Exemption for joint buying and promotion agreements**

A person does not contravene section 30(1) if the contract, arrangement, or understanding that contains the cartel provision—

- “(a) relates to the price for goods or services to be collectively acquired, whether directly or indirectly, by the parties to the contract, arrangement, or understanding; or
- “(b) provides for joint advertising of the price for the resupply of goods acquired in accordance with paragraph (a); or

- “(c) provides for a collective negotiation of the price for goods or services followed by individual purchasing at the collectively negotiated price; or
- “(d) provides for an intermediary to take title to goods and resell or resupply them to another party to the contract, arrangement, or understanding.”

**7 New heading inserted**

The following heading is inserted above section 34:

*“Covenants relating to price fixing”.*

*Acquisitions by overseas persons*

**8 New sections 47A to 47D inserted**

The following sections are inserted after section 47:

**“47A Declaration relating to acquisitions by overseas persons**

- “(1) If an overseas person acquires a controlling interest in a New Zealand company, the High Court may, on an application made under section 47C, make a declaration that the acquisition has, or will have, or is likely to have, the effect of substantially lessening competition in a market in New Zealand.
- “(2) The High Court must not make a declaration if the Commission has given a clearance or granted an authorisation under Part 5 in respect of the acquisition.
- “(3) In this section and sections 47B to 47D,—
  - “**controlling interest** means, in the context of an overseas person having a controlling interest in a New Zealand company, that the overseas person—
    - “(a) controls the composition of the board of the company; or
    - “(b) is in a position to exercise, or control the exercise of, more than 50% of the maximum number of votes that can be exercised at a meeting of the company; or
    - “(c) holds more than 50% of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
    - “(d) is entitled to receive more than 50% of every dividend paid on shares issued by the company, other than shares

that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

“(e) is the holding company (as defined in section 5(2) of the Companies Act 1993) of the company

“**New Zealand company** means a company (whether registered overseas or in New Zealand) that does business in New Zealand

“**overseas person** means a person, whether a body corporate or otherwise, that is neither resident nor carrying on business in New Zealand.

“Compare: 1993 No 105 s 7

“**47B Effect of declaration under section 47A**

A New Zealand company that is the subject of a declaration made under section 47A must cease carrying on business in New Zealand, in the market to which the declaration relates, no later than—

“(a) 6 months after the date of the declaration; or

“(b) such other longer period as the High Court specifies in the declaration.

“**47C Application for declaration**

“(1) An application for a declaration under section 47A may be made only by the Commission.

“(2) An application may not be made later than 12 months after the date of the acquisition to which it relates.

“(3) The Commission must give notice of the application to the relevant overseas person and the New Zealand company.

“**47D Revocation of declaration**

“(1) An application to revoke a declaration made under section 47A may be made at any time by the Commission or the overseas person to whom it relates.

“(2) The High Court may revoke the application if it is satisfied that, because of a change of circumstances, if the New Zealand company in which the overseas person holds a controlling interest were to carry on business in New Zealand in the market

to which the declaration relates, there would be no substantial lessening of competition in that market in New Zealand.”

*Amendments relating to authorisations for  
restrictive trade practices*

**9 Effect of authorisation**

- (1) Section 58A(1) is amended by omitting “nothing in section 27 or section 29, as the case may be,” and substituting “nothing in sections 27 and 30 or in section 29 (as the case may be)”.
- (2) Section 58A(2) is amended by omitting “nothing in section 27 or section 29, as the case may be,” and substituting “nothing in sections 27 and 30 or in section 29 (as the case may be)”.

**10 When Commission may grant authorisation**

Section 59A is amended by repealing subsections (2) and (3).

**11 Commission to prepare draft determination in relation to restrictive trade practices**

- (1) Section 62 is amended by repealing subsections (3), (4), and (5).
- (2) Section 62(6) is amended by omitting “The Commission may, of its own motion, determine to hold a conference in relation to the draft determination and” and substitute “Before determining the application, the Commission may determine to hold a conference and, if so,”.
- (3) Section 62(7) is amended by inserting “, if appropriate,” after “and may prepare a single draft determination in relation to the applications and”.

*Clearance regime for collaborative activities*

**12 New sections 65A to 65D inserted**

The following sections are inserted after section 65:

**“65A Clearances relating to cartel provisions**

- “(1) A person who proposes to enter into a contract or arrangement, or arrive at an understanding, that contains a cartel provision may apply to the Commission for a clearance under this section.

- “(2) The Commission may give a clearance under this section if it is satisfied that—
- “(a) the cartel provision is reasonably necessary for the purpose of a collaborative activity; and
  - “(b) the collaborative activity will not have, or would not be likely to have, the effect of substantially lessening competition in a market.
- “(3) For the purpose of subsection (2), it is not necessary for the Commission to determine whether or not a provision is in fact a cartel provision, provided it is satisfied that the applicant has reasonable grounds for believing that it is.
- “(4) If clearance is not given within 40 days after the date on which the application is registered in accordance with section 60(2)(a), the Commission is deemed to have declined to give the clearance, subject to any alternative timetable agreed between the Commission and the person applying for clearance.

**“65B Effect of clearance under section 65A**

The effect of a clearance given under section 65A is that a party to the contract, arrangement, or understanding to which the clearance relates does not contravene section 27, 29, or 30(1) by entering into the contract or arrangement, or arriving at the understanding, or giving effect to any cartel provision in the contract, arrangement, or understanding.

**“65C Procedures relating to clearances**

- “(1) Section 60 applies to an application for a clearance under section 65A in the same way as it applies to an application for an authorisation made under section 58.
- “(2) Every clearance given under section 65A must be given by way of written notice to the applicant.

**“65D Revocation of clearances**

- “(1) The Commission may revoke a clearance given under section 65A if it is satisfied that—
- “(a) the clearance was given on information that was false or misleading in a material particular; or

“(b) there has been a material change of circumstances since the clearance was given.

- “(2) The Commission must not revoke a clearance unless the person to whom the clearance was given, and any other person who in the opinion of the Commission is likely to have an interest in the matter, is given a reasonable opportunity to make submissions to the Commission and the Commission has had regard to those submissions.”

*Amendment relating to clearance for business acquisitions*

- 13 Commission may give clearances for business acquisitions**  
Section 66(3) is amended by omitting “10 working days” and substituting “40 working days”.

*Consequential amendment relating to cartels*

- 14 Jurisdiction of High Court**  
Section 75(1)(a) is amended by adding the following subparagraph:

“(iv) proceedings for offences against section 82B:”.

*Consequential amendment relating to acquisitions by overseas persons*

- 15 Lay members of High Court in certain cases**  
Section 78(1) is amended by omitting “or 47” and substituting “, 47, or 47B”.

*Consequential amendment relating to cartels*

- 16 Relationship between pecuniary penalty and criminal liability**
- (1) Section 79B(1) is amended by omitting “section 86B or 87B” and substituting “this Part”.
- (2) Section 79B(2) is amended by omitting “section 86B or 87B” and substituting “this Part”.

*Defences in proceedings relating to cartels***17 Pecuniary penalties**

- (1) The heading to section 80 is amended by adding “**relating to restrictive trade practices**”.
- (2) Section 80 is amended by inserting the following subsection after subsection (2B):  
“(2C) If a defendant wishes to rely on an exemption relating to cartel provisions under section 31, 32, or 33, it is for the defendant to prove, on the balance of probabilities, that the exemption applies.”

*Consequential amendment relating to cartels***18 Body corporate not to indemnify certain persons in respect of pecuniary penalties**

- (1) Section 80A is amended by omitting the heading and substituting the following heading: “**No indemnity for pecuniary penalties relating to cartel provisions**”.
- (2) Section 80A(1) is amended by repealing paragraph (a) and substituting the following paragraph:  
“(a) liability for payment of a pecuniary penalty under section 80 that arises out of contravention of section 30(1) (about cartel provisions); or”.

*Excluding persons involved in cartels***19 Court may order certain persons to be excluded from management of body corporate**

Section 80C is amended by repealing paragraphs (a) and (b) and substituting the following paragraph:

- “(a) the person—
  - “(i) has entered into a contract or arrangement, or arrived at an understanding, that contains a cartel provision; or
  - “(ii) has given effect to a contact, arrangement, or understanding that contains a cartel provision:”.

*Restriction on exemplary damages*

**20 Exemplary damages for contravention of Part 2**

Section 82A is amended by adding the following subsection:

- “(3) The court may not order a person to pay exemplary damages in relation to conduct for which the person has been convicted of an offence under this Part.”

*Cartel offence*

**21 New section 82B inserted**

The following section is inserted after section 82A:

**“82B Offence relating to cartel provisions**

- “(1) A person commits an offence if the person—
- “(a) contravenes section 30(1)(a), knowing, at the time that the person enters into a contract or arrangement, or arrives at an understanding, that contains a cartel provision, that the provision is a cartel provision; or
  - “(b) contravenes section 30(1)(b), knowing, at the time the cartel provision is given effect to, that the provision is a cartel provision.
- “(2) If a defendant wishes to rely on the exemption relating to cartel provisions in section 31, it is for the defendant to prove, on the balance of probabilities, that—
- “(a) the exemption applies; or
  - “(b) the person believed, at the time when the contract or arrangement was entered into, or the understanding was arrived at, or when the cartel provision was given effect to (as the case may be), that—
    - “(i) the parties were involved in a collaborative activity; and
    - “(ii) the cartel provision contained in the contract, arrangement, or understanding was reasonably necessary for the purpose of the collaborative activity.
- “(3) If a defendant wishes to rely on an exemption relating to cartel provisions under section 32 or 33, it is for the defendant to prove, on the balance of probabilities, that the exemption applies.

- “(4) If a defendant wishes to rely on any exemption relating to cartel provisions in section 31, 32, or 33, the person must—
- “(a) notify the prosecution of that fact within 1 month after the date on which the person is committed for trial for the offence; and
  - “(b) at the same time, provide sufficient details about the application of the exemption to fully and fairly inform the prosecution of the manner in which the exemption is claimed to apply.
- “(5) An individual who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 7 years.
- “(6) A body corporate that commits an offence against this section is liable on conviction on indictment to a fine of the greater of the following:
- “(a) \$10 million;
  - “(b) either,—
    - “(i) if it can be readily ascertained, and if the Court is satisfied that the offence occurred in the course of producing a commercial gain, 3 times the value of any commercial gain resulting from the contravention; or
    - “(ii) if the commercial gain cannot be readily ascertained, 10% of the turnover of the body corporate and all of its interconnected bodies corporate (if any).”

*Amendment relating to acquisitions by overseas  
persons*

**22 Pecuniary penalties**

- (1) The heading to section 83 is amended by adding “**relating to business acquisitions**”.
- (2) Section 83(1)(a) is amended by omitting “47” and substituting “47, or failed to comply with section 47B”.

*Attributing conduct*

**23 Conduct by servants or agents**

Section 90 is amended by repealing subsection (4) and substituting the following subsection:

- “(4) Any conduct engaged in on behalf of a person other than a body corporate (**person A**)—
- “(a) by a person at the direction or with the consent or agreement (whether express or implied) of person A; or
  - “(b) by a servant or agent of person A acting within the scope of his or her actual or apparent authority; or
  - “(c) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of person A, given within the scope of the actual or apparent authority of the servant or agent—
- is deemed, for the purposes of this Act, to have been engaged in also by person A.”

*Appeals relating to authorisations and clearances*

**24 Persons entitled to appeal**

- (1) Section 92 is amended by repealing paragraph (a) and substituting the following paragraph:

- “(a) in the case of an appeal against a determination of the Commission in relation to an application for an authorisation under section 58 or 67, the applicant and any other person who—
- “(i) has a direct and significant interest in the application; and
  - “(ii) participated in the Commission’s processes leading up to the determination:”.

- (2) Section 92 is amended by repealing paragraph (c) and substituting the following paragraph:

- “(c) in the case of an appeal against a determination of the Commission under section 66 in relation to a notice seeking a clearance,—
- “(i) the person who sought the clearance; and

- “(ii) any person whose assets, or the shares in which, are proposed to be acquired pursuant to the clearance:”.
- (3) Section 92 is amended by inserting the following paragraph after paragraph (c):
- “(ca) in the case of an appeal against a determination of the Commission under section 65A,—
- “(i) the person who applied for the clearance; and
- “(ii) any other person who is a party to the contract, arrangement, or understanding to which the application for clearance relates:”.

### *Increasing penalties*

#### **25 Offences**

- (1) Section 103 is amended by repealing subsection (4) and substituting the following subsection:
- “(4) A person who contravenes subsection (1), (2), or (3) commits an offence and is liable on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 18 months:
- “(b) in the case of a body corporate, to a fine not exceeding \$1 million.”
- (2) Section 103(5) is amended by omitting “6 months” and substituting “3 years”.

## **Part 2**

### **Transitional clearance regime and consequential amendment**

#### **26 Purpose of this Part**

The purpose of this Part is to allow the clearance regime for cartels to begin to operate before the new provisions about cartels, as inserted by Part 1 of this Act, come into force, even though any clearance given will not take effect until those provisions come into force.

#### **27 Interpretation in this Part**

- (1) In this Part,—

**cartel commencement date** means the date referred to in section 2(2) (which is the date on which amendments relating to cartels come into force)

**collaborative activity** means an enterprise, venture, or other activity, in trade, that—

- (a) is carried on in co-operation by 2 or more persons; and
- (b) is not carried on for the dominant purpose of lessening competition.

- (2) Terms used in this Part that are defined in the principal Act have the meanings given by the principal Act.

## **28 Transitional clearances**

- (1) A person who proposes to enter into a contract or arrangement, or arrive at an understanding, that contains a provision that, after the cartel commencement date, would be a cartel provision, may apply to the Commission for a clearance under this section.
- (2) The Commission may give a clearance under this section if it is satisfied that—
  - (a) the cartel provision is reasonably necessary for the purpose of a collaborative activity; and
  - (b) the collaborative activity will not have, or would not be likely to have, the effect of substantially lessening competition in a market.
- (3) For the purpose of subsection (2), it is not necessary for the Commission to determine whether or not a provision would in fact be a cartel provision, provided it is satisfied that the applicant has reasonable grounds for believing that it would be.
- (4) If clearance is not given within 40 days after the date on which the application is registered in accordance with section 60(2)(a) of the principal Act, the Commission is deemed to have declined to give the clearance, subject to any alternative timetable agreed between the Commission and the person applying for clearance.

**29 Effect of clearance under section 28**

- (1) On and after the cartel commencement date, a clearance given under section 28 of this Act is deemed to have been given under section 65A of the principal Act.
- (2) To avoid doubt, before the cartel commencement date, a clearance given under section 28 has no legal effect.

**30 Procedures relating to clearances under section 28**

- (1) Section 60 of the principal Act applies to an application for a clearance under section 28 in the same way as it applies to an application for an authorisation made under section 58 of the principal Act.
- (2) Every clearance given under section 28 must be given by way of written notice to the applicant.

**31 Revocation of clearances given under section 28**

- (1) The Commission may revoke a clearance given under section 28 if it is satisfied that—
  - (a) the clearance was given on information that was false or misleading in a material particular; or
  - (b) there has been a material change of circumstances since the clearance was given.
- (2) The Commission must not revoke a clearance unless the person to whom the clearance was given, and any other person who in the opinion of the Commission is likely to have an interest in the matter, is given a reasonable opportunity to make submissions to the Commission and the Commission has had regard to those submissions.

**32 Appeals**

An appeal against a determination of the Commission under section 28 may be made by—

- (a) the person who applied for the clearance; or
- (b) any other person who is a party to the contract, arrangement, or understanding to which the application for clearance relates.

**33 Repeal of this Part**

- (1) This Part is repealed on the cartel commencement date.
- (2) The repeal of this Part does not affect any clearance given under it, or any process commenced under it before its repeal.

**34 Consequential amendment to District Courts Act 1947**

Part 2 of Schedule 1A of the District Courts Act 1947 is amended by adding the following Part:

*“Part N—Commerce Act 1986*

<b>Section</b>	<b>Offence</b>
Section 82B	Offence relating to cartel provisions