

[CONFIDENTIAL.] 34

(Rough Draft for Consideration Only.)

No. , 1919.

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## A BILL

To repress trusts and monopolies in trade or commerce; to amend the Industrial Arbitration Act, 1912; and for purposes consequent thereon or incidental thereto.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** This Act may be cited as the "Commercial Trusts Act, 1919," and shall come into operation on the first day of January, one thousand nine hundred and twenty.

Short title  
and com-  
mencement.

2. This Act is divided into Parts, as follows :—

Division of  
Act.

PART I.—PRELIMINARY—*ss.* 3-4.

PART II.—COMMERCIAL TRUSTS AND MONOPOLIES  
—*ss.* 5-13.

PART III.—PENALTIES AND PROCEDURE—*ss.* 14-  
24.

PART I.

PRELIMINARY.

3. Sections seventy and seventy-one of the Industrial Arbitration Act, 1912, are hereby repealed. Repeal.

4. In this Act, unless the context or subject-matter otherwise requires,— Interpreta-  
tion.

“Answer questions” means that the person on whom the obligation of answering questions is cast shall to the best of his knowledge, information, and belief truly answer all questions relating to the subject-matter. Australian  
Industries  
Preservation  
Act, 1906-  
1910, s. 3.

“Association” includes the union of any number of persons by or under any agreement or trust, whether temporary or permanent, and whether legally valid or not, and whether including any scheme of organisation or common management or control or not. N.Z. Com-  
mercial  
Trusts Act,  
1910, s. 2.

“Commercial trust” means any association or combination (whether incorporated or not) of any number of persons either before or after the commencement of this Act, and either in New South Wales or elsewhere, and— Ibid.

- (a) having as its object, or as one of its objects, that of (i) controlling, determining, or influencing the supply or demand, or price of any goods in New South Wales or elsewhere, or that of (ii) creating or maintaining in New South Wales or elsewhere a monopoly, whether complete or partial, of the supply or demand of any goods ; or (b)

(b) acting in New South Wales or elsewhere with any such object as aforesaid; and includes any firm or incorporated company having any such object, or acting as aforesaid.

“Member of a commercial trust” means any of *Ibid.* the constituent persons of that trust, or any agent of that trust, and, where any such constituent person or agent is a corporation, firm, or association, includes every member or agent of that corporation, firm, or association.

“Person” includes a corporation, and as used in *Ibid.* the foregoing definitions of “commercial trust,” “association,” and “member of a commercial trust” includes also a firm of partners or any other association or combination of persons.

“Produce documents” means that the person on whom the obligation to produce documents is cast shall to the best of his power produce all documents relating to the subject-matter. Australian Industries Preservation Act, 1906-1910, s. 3.

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## PART II.

### COMMERCIAL TRUSTS AND MONOPOLIES.

5. (1) Any person is guilty of an offence who, either as principal or as agent, makes or enters into any contract, or is or continues to be a member of or engages in any association, in relation to trade or commerce within or partly within New South Wales, in restraint of or with intent to restrain trade or commerce within or partly within New South Wales. Agreements in restraint of trade. cf. U.S. Sherman Act, 1890, s. 1.

(2) Every contract made or entered into in contravention of this section shall be illegal and void.

(2)

(3) It shall be a defence to a proceeding for an offence under this section, if the party alleged to have contravened the section proves—

cf. Australian Industries Preservation Act, 1906-1910, s. 4.

- (a) that the matter or thing alleged to have been done in restraint of, or with intent to restrain, trade or commerce, was not to the detriment of the public ; and
- (b) that the restraint of trade or commerce effected or intended was not unreasonable.

**6.** (1) Any person who monopolises or attempts to monopolise, or combines or conspires with any other person to monopolise wholly or partially the demand or supply in New South Wales or any part thereof of any goods, or to control wholly or partially the demand or supply or price in New South Wales or any part thereof of any goods is guilty of an offence.

Monopolising or controlling the demand or supply of goods.  
cf. U.S. Sherman Act, 1890, s. 2.

(2) Every contract made or entered into in contravention of this section shall be illegal and void.

(3) It shall be a defence to a proceeding under this section if the person alleged to have contravened the section proves that such monopoly or control is not of such a nature as to be contrary to the public interest.

**7.** (1) Any person party to a contract or member of an association or in any way concerned in carrying out the contract or the objects of the association may—

Public notification of terms of contract or association.  
cf. Australian Industries Preservation Act, 1906-1910, s. 15.

- (a) lodge with the Attorney-General a statutory declaration by himself, or in the case of a corporation by some one approved of in that behalf by the Attorney-General setting forth truly fully and completely the terms and particulars of the contract, or the purposes, objects, and terms of agreement or constitution of the combination, as the case may be, and an address in New South Wales to which notices may be sent by the Attorney-General ; and
- (b) publish the statutory declaration in the Gazette.

(2) The Attorney-General may at any time send notice to the person abovementioned (hereinafter called the declarant), to the address mentioned in the statutory declaration, that he considers the contract or association likely to restrain trade or commerce to the detriment of the public.

Notice by Attorney-General.

(3)

(3) In any proceeding against the declarant in respect of any offence against section six of this Act, alleged to have been committed by him in relation to the contract or association after the time the statutory declaration has been lodged and published, and before any notice as aforesaid has been sent to him by the Attorney-General, it shall be deemed (but as regards the declarant only and not as regards any other person) that the declarant had no intent to contravene the provisions of the section, if he proves that the statutory declaration contains a true full and complete statement of the terms and particulars of the contract, or the purposes, objects, and terms of agreement or constitution of the association, as the case may be, at the date of the statutory declaration and at the date of the alleged offence.

8. Every person commits an offence who, either as principal or agent, in respect of dealings in any goods, gives, offers, or agrees to give to any other person any rebate, refund, discount, concession, allowance, reward, or other valuable consideration for the reason or upon the express or implied condition that the latter person—

Innocent intent presumed.  
 Illegal concessions in consideration of exclusive dealing.  
 cf. N.Z. Commercial Trusts Act, 1910, s. 3.

- (a) deals or has dealt, or will deal, or intends or undertakes, or has undertaken or will undertake, to deal, exclusively or principally, or to such an extent as amounts to exclusive or principal dealing, with any person or class of persons, either in relation to any particular goods or generally; or
- (b) does not deal or has not dealt, or will not deal, or intends or undertakes, or has undertaken or will undertake, not to deal with any person or class of persons, either in relation to any particular goods or generally; or
- (c) restricts or has restricted or will restrict, or intends or undertakes, or has undertaken, or will undertake to restrict, his dealing with any person or class of persons, either in relation to any particular goods or generally; or

(d)

- (d) is or becomes or has been, or has undertaken, or will undertake to become, a member of a commercial trust ; or
- (e) acts or has acted or will act, or intends or undertakes or has undertaken or will undertake to act, in obedience to or in conformity with the determinations, directions, suggestions or requests of any commercial trust with respect to the sale, purchase, or supply of any goods.

9. Every person commits an offence who, either as principal or agent, refuses, either absolutely or except upon disadvantageous or relatively disadvantageous conditions, to sell or supply to any other person, or to purchase from any other person any goods for the reason that the latter person—

Illegal refusals to deal.  
*Ibid.* s. 4.

- (a) deals, or has dealt, or will deal, or intends to deal, or has not undertaken or will not undertake not to deal with any person or class of persons, either in relation to any particular goods or generally ; or
- (b) is not or has not been, or will not become, or undertake to become, or has not undertaken to become a member of a commercial trust ; or
- (c) does not act, or has not acted, or will not act, or does not intend to act, or has not undertaken or will not undertake to act in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale, purchase, or supply of any goods.

10. (1) Every person commits an offence who, either as principal or agent, sells or supplies, or offers for sale or supply, any goods at a price which is unreasonably high, if that price has been in any manner directly or indirectly determined, controlled, or influenced by any commercial trust of which that person or his principal (if any) is or has been a member.

Sales at prices fixed by a commercial trust.  
*Ibid.* s. 6.

(2) Every person commits an offence who, in obedience to or in consequence of or in conformity with any determination, direction, suggestion, or request of any

any commercial trust, whether he is a member of that trust or not, sells or supplies, or offers for sale, any goods, whether as principal or agent, at a price which is unreasonably high.

**11.** (1) If any commercial trust, whether as principal or agent, sells or supplies, or offers for sale or supply, any goods at a price which is unreasonably high, every person who is then a member of that trust shall be deemed to have committed an offence against this Act.

Sales by a commercial trust.  
*Ibid.* s. 7.

(2) If in any such case the commercial trust is a corporation, it shall itself be guilty of an offence against this Act; but the liability of the trust shall not exclude or affect the liability of its members under the last preceding subsection.

**12.** For the purposes of this Act the price of any goods shall be deemed to be unreasonably high if it produces or is calculated to produce more than a fair and reasonable rate of commercial profit to the person selling or supplying, or offering to sell or supply, those goods, or to his principal, or to any commercial trust of which that person or his principal is a member, or to any member of any such commercial trust.

When prices are to be deemed unreasonably high.  
*Ibid.* s. 8.

**13.** Every person who aids, abets, counsels, or procures, or is in any way knowingly concerned in the commission of an offence against this Act, shall be deemed to have committed an offence.

Aiding and abetting offences against this Act.  
*Ibid.* s. 9.

### PART III.

#### PENALTIES AND PROCEDURE.

**14.** (1) Every person who commits an offence against this Act shall, unless this Act otherwise provides, be liable to a penalty of *five hundred* pounds.

Penalty.  
*Ibid.* s. 10.

(2) If two or more persons are responsible for the same offence against this Act, each of those persons shall be severally liable to a penalty of *five hundred* pounds, and the liability of each of them shall be independent of the liability of the other or others.

**15.**

**15.** (1) Every such penalty shall constitute a debt due by the offender to His Majesty the King, and shall be recoverable, together with costs of suit, by a civil action in the Supreme Court, instituted by the Attorney-General for and in the name of His Majesty.

Penalty recoverable by action in Supreme Court.

*Ibid.* s. 11.

(2) Such action shall be tried without a jury.

**16.** In any such action the Supreme Court may remit such part of the aforesaid penalty as it thinks fit, and may give judgment for the residue only.

Supreme Court may reduce penalty.

*Ibid.* s. 12.

**17.** In any such action the Supreme Court may, in addition to the said penalty, grant an injunction against the continuance or repetition of the offence; but no such injunction shall be granted by way of interlocutory order before final judgment in the action.

Injunction.

*Ibid.* s. 13.

**18.** (1) Any person who does any act or thing in disobedience of such injunction shall be guilty of an offence and liable to a penalty not exceeding *five hundred* pounds for each day during which the offence continues.

Disobedience to injunction.

cf. Australian Industries Preservation Act, 1906-1910, s. 10A.

(2) This section shall not be deemed to derogate from the power of the Supreme Court, apart from this section, to enforce obedience to the injunction.

**19.** (1) In any such action claims may be joined for the recovery of penalties in respect of several offences whether of the same or different kinds.

Joinder of parties and causes of action.

(2) In any such action several persons may be joined as defendants, whether in respect of the same or of different offences, and whether those offences are committed by the same or by different parties; and in any such case separate judgments may be given in respect of each defendant so joined.

cf. N.Z. Commercial Trusts Act, s. 14.

(3) In the case of any such joinder of causes of action or of parties the Supreme Court may give such directions as it thinks fit for the separate trial of any cause of action against any defendant.

**20.** (1) Any person who is injured in his person or property by any other person, by reason of any act or thing done by that other person in contravention of this Part of this Act, or by reason of any act or thing done in contravention of any injunction granted under this Part of this Act, may, in an action in the Supreme Court, without a jury, sue for and recover treble damages for the injury.

Action for treble damages. cf. U.S. Sherman Act, 1890, s. 7.

(2)



(2) No person shall, in any proceeding under this section, be excused from answering any question put either viva voce or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him; but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury.

**21.** (1) Any offence against this Act, committed by a person who has previously been convicted of an offence against this Act, shall be an indictable offence punishable on conviction by a penalty not exceeding *five hundred* pounds, or imprisonment for any term not exceeding one year, or both; and, in the case of a corporation, by a penalty not exceeding *one thousand* pounds.

Second  
offence  
indictable.  
cf. Australian  
Industries  
Preservation  
Act,  
1906-1910,  
ss. 13, 14.

(2) No proceeding for an indictable offence against this Act shall be instituted except by the Attorney-General or some person authorised by him.

**22.** No person shall, in any proceeding for an offence against this Act, be excused from answering any question, either viva voce or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may tend to criminate him or make him liable to a penalty; but his answer shall not be admissible in evidence against him in any civil or criminal proceeding other than a proceeding for an offence against this Act or a prosecution for perjury.

Incriminating  
answers.  
*Ibid.* s. 14B.

**23.** (1) In any proceeding for an offence against sections five, eight, nine, or thirteen of this Act the averment of the prosecutor or plaintiff contained in the information complaint, declaration, or claim shall be prima facie evidence of the matter or matters averred.

Burden of  
proof.  
Customs Bill,  
1919, s. 21.

(2) This section shall apply to any matter so averred, although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or,
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be prima facie evidence of the fact only.

(2)

(3) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4) Subsection one of this section shall not apply to—

- (a) an averment of the intent of the defendant, or
- (b) proceedings for an indictable offence, or an offence directly punishable by imprisonment.

(5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

*Power of Attorney-General to direct an inquiry.*

**24.** (1) If the Attorney-General, whether on complaint made to him or not, believes that an offence has been committed against this Act he may, by writing under his hand, direct the Commission appointed under the Necessary Commodities Control Act, 1919, to hold an inquiry into the facts and circumstances of the alleged offence.

Power to require persons to answer questions and produce documents.

(2) For the purposes of such inquiry the said commission shall have the powers conferred upon it by the said Act; and, in particular, may require any person whom it believes to be capable of giving any information in relation to the alleged offence to answer questions and produce documents.

(3) Any person who refuses or fails to answer questions or produce documents when required to do so in pursuance of this section, shall be liable to a penalty not exceeding *one hundred* pounds. Such penalty shall be recoverable in the manner provided by the said Act.

(4) No person shall be excused from answering any questions or producing any documents when required to do so under this section on the ground that the answer to the question or the production of the document might tend to criminate him; but his answer shall not be admissible in evidence against him in any civil or criminal proceeding other than a proceeding for an offence against this Act.

(5)

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(5) The said Commission may impound or retain any book or document produced to it in pursuance of this section, but the person or corporation otherwise entitled to such book or document shall in lieu thereof be entitled to a copy certified as correct by the chairman of the Commission, and such certified copy shall be receivable in all courts as evidence, and of equal validity with the original. And until such certified copy is supplied, the Commission may, at such times and places as it shall think proper, permit such person, or in the case of a corporation any person appointed for the purpose by the corporation, to inspect and take extracts from the books or documents so impounded or retained.

(6) On the completion of such inquiry the chairman of the said Commission shall immediately forward to the Attorney-General the evidence taken and the documents produced in the course of such inquiry.

(7) This section shall in no way affect the right of the Attorney-General to institute proceedings under this Act without first directing the said Commission to hold an inquiry.

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