

No. , 1911.

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# A BILL

For the regulation of industries and commerce, and for the repression of destructive monopolies in the State of New South Wales.

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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 shall come into force on the and may be cited as the "Industries and Commerce Act of 1911."

Short title.

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

**PART I.—PRELIMINARY.**

**PART II.—REGULATION OF INDUSTRIES AND COMMERCE, AND REPRESSION OF MONOPOLIES.**

- 3.** In this Act, unless the contrary intention appears—
- “State” means the State of New South Wales.
- “Commercial trust” includes a combination, whether wholly or partly within or beyond the State, of separate and independent persons (corporate or unincorporate) whose voting power or determinations are controlled or controllable by—
- (a) the creation of a trust as understood in equity, or of a corporation, wherein the trustees or corporation hold the interests, shares, or stock of the constituent persons; or
  - (b) an agreement; or
  - (c) the creation of a board of management or its equivalent; or
  - (d) some similar means;
- and includes any division, part, constituent person, or agent of a commercial trust.
- “Inadequate remuneration for labour” includes inadequate pay or excessive hours or any terms or conditions of labour or employment unduly disadvantageous to workers;
- “Person” includes corporation and firm and a commercial trust.
- “The Comptroller-General” means the Comptroller-General of Customs.
- “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 on the subject mentioned that the Attorney-General or the person named by him shall ask.
- “Produce documents” means that the person on whom the obligation to produce documents is cast shall to the best of his power produce to the Attorney-General or to the person named by him all documents relating to the subject-matter mentioned.

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## PART II.

### REPRESSION OF MONOPOLIES.

- 4.** (1) Any person 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 combination, in relation to trade or commerce—
- (a) in restraint of, or with intent to restrain trade or commerce; or
  - (b) to the destruction or injury of, or with intent to destroy or injure by means of unfair competition any State industry the preservation of which is advantageous to the State, having due regard to the interests of producers, workers, and consumers,
- is guilty of an offence.
- Penalty :

Restraint of inter-State or external trade and destruction of industries.

Penalty: *Five hundred* pounds, or in the case of a continuing offence, *five hundred* pounds for each day during which the offence continues.

(2) It shall be a defence to a proceeding for an offence under paragraph (a) of subsection one of this section, and an answer to an allegation that a contract was made or entered into in restraint of, or with intent to restrain, trade or commerce, if the party alleged to have contravened this section proves—

- (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.

**5.** (1) For the purposes of section four and section eleven of Unfair competition. this Act, unfair competition means competition which is unfair in the circumstances; and in the following cases the competition shall be deemed to be unfair unless the contrary is proved:—

- (a) If the defendant is a commercial trust.
- (b) If the competition would probably, or does in fact result in an adequate remuneration for labour in the State industry.
- (c) If the competition would probably, or does in fact result in creating substantial disorganisation in State industry, or throwing workers out of employment.
- (d) If the defendant, with respect to any goods or services which are the subject of competition, gives, offers, or promises to any person any rebate, refund, discount, or reward upon condition that that person deals, or in consideration of that person having dealt, with the defendant to the exclusion of other persons dealing in similar goods or services.

(2) In determining whether the competition is unfair, regard shall be had to the management, the processes, the plant, and the machinery employed or adopted in the States affected by the competition being reasonably efficient, effective, and up-to-date.

**6.** (1) Any person who monopolises, or attempts to monopolise, or combines or conspires with any other person to monopolise, any part of the trade or commerce of the State, is guilty of an indictable offence. Monopoly of Inter-State or external trade. Cf. U.S. Sherman Act, s. 2.

Penalty: *Five hundred* pounds for each day during which the offence continues, or one year's imprisonment, or both; or, in the case of a corporation, one thousand pounds for each day during which the offence continues.

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

(3) The Attorney-General may elect, instead of proceeding by indictment for an offence against this section, to institute proceedings in the High Court by way of civil action for the recovery of the pecuniary penalties for the offence; in which case the action shall be tried before a justice of that court without a jury.

**7.**

**7.** (1) Any person who, in relation to trade or commerce, either as principal or agent, in respect of dealings in any goods or services, gives, offers, or promises to any other person any rebate, refund, discount, concession, or reward, for the reason, or upon the condition, express or implied, that the latter person—

Unfair concessions  
by persons.

- (a) deals, or has dealt, or will deal, or intends to deal exclusively with any person, either in relation to any particular goods or services or generally; or
  - (b) deals, or has dealt, or will deal, or intends to deal, exclusively with members of a commercial trust, either in relation to any particular goods or services or generally; or
  - (c) does not deal, or has not dealt, or will not deal, or does not intend to deal, with certain persons, either in relation to any particular goods or services or generally; or
  - (d) is or becomes a member of a commercial trust,
- is guilty of an offence.

Penalty: *Five hundred* pounds.

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

(3) It shall be a defence to a prosecution under this section, and an answer to an allegation that a contract was made or entered into in contravention of this section, if the party alleged to have contravened this section proves that the matter or thing alleged to have been done in contravention of this section was not to the detriment of the public, and did not constitute competition which was unfair in the circumstances, and was not destructive or injurious to any State industry.

**8.** Any person who, in relation to trade and commerce with other countries or among the States, either as principal or agent, refuses either absolutely or except upon disadvantageous conditions to sell or supply to any other person any goods or services for the reason that the latter person—

Improper refusals to  
sell by persons.

- (a) deals, or has dealt, or will deal, or intends to deal, with any person; or
  - (b) deals, or has dealt, or will deal, or intends to deal, with persons who are not members of a commercial trust; or
  - (c) is not a member of a commercial trust,
- is guilty of an offence.

Penalty: *Five hundred* pounds.

(9) Any person who, in relation to trade or commerce, either as principal or agent, in respect of dealings in any goods or services, gives, offers, or promises to any one person any rebate, refund, discount, concession, subsidy, or reward to the exclusion of other persons, or gives, offers, or promises any rebate, discount, concession, subsidy, or reward at a higher rate exclusively to any one person than to other persons, to their disadvantage, is guilty of an offence.

Special power  
needed.

Penalty:

Penally, *five hundred* pounds; or, in case of a continuing offence, *five hundred* pounds for each day during which the offence continues.

**10.** Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in or privy to—

- (a) the commission of any offence against this Part of this Act; or
  - (b) the doing of any act outside the State which would, if done within the State, be an offence against this Part of this Act,
- shall be deemed to have committed the offence.

Penalty, *five hundred* pounds.

**11.** (1) The Attorney - General, or any person thereto authorised by him, may institute proceedings in the Supreme Court to restrain by injunction after hearing and determining the merits and not by way of interlocutory order the carrying out of any contract made or entered into after the commencement of this Act, or any combination which—

- (a) is in restraint of trade or commerce; or
- (b) is destructive or injurious, by means of unfair competition, to any State industry the preservation of which is advantageous to the State, having due regard to the interests of producers, workers, and consumers.

(2) The Attorney-General, or any person thereto authorised by him, may institute proceedings in the Supreme Court to restrain by way of interlocutory order any person from giving, offering, or promising in respect of dealings in goods or services, any rebate, refund, discount, concession, subsidy, or reward to any one person to the exclusion of other persons, or from giving, offering, or promising any rebate, refund, discount, concession, subsidy, or reward at a higher rate exclusively to any one person than to other persons to their disadvantage.

(3) On the conviction of any person for an offence under this Part of this Act the justice before whom the trial takes place shall, upon application by or on behalf of the Attorney-General or any person thereto authorised by him, grant an injunction restraining the convicted person and his servants, and agents from the repetition or continuance of the offence of which he has been convicted.

**12.** (1) Any person who does any act or thing in disobedience of an injunction granted under this part of this Act shall be guilty of an offence.

Penalty: *Five hundred* pounds for each day during which the offence continues.

(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.

**13.**

**13.** (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 the Supreme Court, before a justice 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) No person shall, in any proceeding under this section, be excused from answering any question put either vica 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.

Incriminating answer or discovery.

**14.** (1) Proceedings for the recovery of pecuniary penalties for offences against this Part of this Act (other than indictable offences) shall be instituted in the Supreme Court by way of civil action and shall be tried before a justice of that court without a jury.

Civil proceedings for the recovery of penalties.

(2) Any offence against this Part of this Act committed by a person who has previously been convicted of any offence against this Part of 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; in the case of a corporation, by a penalty not exceeding *one thousand* pounds.

Second offence.

**15.** (1) No proceeding for an indictable offence or for the recovery of penalties shall be instituted under this Part except by the Attorney-General or some person authorised by him.

No proceeding without authority of Attorney-General.

(2) No other proceeding shall be instituted under this Part without the written consent of the Attorney-General.

**16.** In any proceeding for an offence against this Part of this Act, any indictment, information, statement of claim, conviction, warrant, or other process shall suffice if the offence is set forth as nearly as may be in the words of this Act.

Information, &c., to suffice if in words of this Act.  
Cf. 1901, No. 6, s. 250.

**17.** No person shall, in any proceeding for an offence against this Part of this Act, 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 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.

**18.** In any proceeding for an offence against this Part of this Act, wherein a combination or conspiracy or attempted combination or conspiracy in contravention of this Act is alleged, any book, document, paper, or writing containing—

Minutes, records, &c., to be evidence.

- (a) Any minute, note, record, or memorandum of any proceeding at any meeting of the persons or any of the persons alleged to have been parties or privy to the combination, conspiracy, or attempt, or
- (b)

(b) any entry purporting to be a copy of or extract from any such book, document, paper, or writing, shall, upon proof that it was produced by or came from the custody of those persons or any of them, or of a responsible officer or a representative of those persons or any of them,—

- (i) be admissible in evidence against those persons ; and
- (ii) be evidence that the matter and things thereby appearing to have been done by those persons or any of them were so done, and that any person thereby appearing to have been present at the meeting was so present.

**19.** In any proceeding for an offence against this Part of this Act, any book, letter, document, paper, or writing, or anything purporting to be a copy of or extract from any book, letter, document, paper, or writing, containing any reference to any matter or thing alleged to be done in contravention of this Act, shall, upon proof that it was produced by or came from the custody of a person charged with the offence, or a responsible officer or a representative of that person,—

Books, letters, documents, &c., to be evidence.

- (a) be admissible in evidence against that person ; and
- (b) be evidence of the matters and things thereby appearing, and that the book, letter, document, paper, or writing (or, in the case of a copy, that the original thereof) was written, signed, despatched, and received by the persons by whom it purports to have been written, signed, despatched, and received, and that any such copy or extract is a true copy of or extract from the original of or from which it purports to be a copy or extract.

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

Public notification of terms of contract or combination.

- (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 the State 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 above mentioned (hereinafter called the declarant), to the address mentioned in the statutory declaration, that he considers the contract or combination likely to restrain trade or commerce to the detriment of the public, or to destroy or injure a State industry by unfair competition.

Notice by Attorney-General.

(3)

(3) In any proceeding against the declarant in respect of any offence against section four of this Act, alleged to have been committed by him in relation to the contract or combination 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 combination, as the case may be, at the date of the statutory declaration and at the date of the alleged offence.

Innocent intent presumed.

**21.** In any prosecution for an offence against sections four, six, seven, eight, nine, or ten of this Act the averments of the prosecutor contained in the information, declaration, or claim shall be deemed to be proved in the absence of proof to the contrary, but so that—

Burden of proof. Cf. 1901, No. 6, s. 255.

- (a) the averment in the information of intent shall not be deemed sufficient to prove such intent; and
- (b) in all proceedings for an indictable offence the guilt of the defendant must be established by evidence.

**22.** (1) If the Attorney-General believes that an offence has been committed against this Part of this Act, or if a complaint has been made in writing to the Comptroller-General that an offence has been committed against this Part of this Act and the Attorney-General believes that the offence has been committed, he may by writing under his hand require any person whom he believes to be capable of giving any information in relation to the alleged offence to answer questions and to produce documents to him or to some person named by him in relation to the alleged offence.

Power to require persons to answer questions and produce documents. Cf. 1901, No. 6, ss. 38, 234.

(2) No person shall refuse or fail to answer questions or produce documents when required to do so in pursuance of this section.

Penalty, *fifty* pounds.

(3) The Attorney-General or any person to whom any documents are produced in pursuance of this section may take copies of or extracts from those documents.

(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 Part of this Act.

**23.**



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**23.** The Attorney-General may impound or retain any book or document produced to him or to any person so appointed by him in pursuance of the preceding 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 Attorney-General, 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 Attorney-General may, at such times and places as he 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.

Comptroller-General  
may impound  
documents.  
Cf. 1901, No. 6,  
s. 215.

**24.** No person shall disclose any information gained by him in the exercise of the powers conferred by the last three preceding sections except—

Information not to  
be disclosed.

- (a) to the Attorney-General, or some person authorised by him ;
- (b) when giving evidence in any proceeding for an offence against this Part of this Act.

Penalty, *fifty* pounds.

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