

[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1926.

A BILL

For the prevention and restraint of monopolies, combinations, discriminations, and unfair dealings in trade; to foster trade and industry; to repeal the Monopolies Act, 1923; and for purposes consequential thereon and incidental thereto.

BE 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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Monopolies Act, Short title, 1926."

Monopolies.

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

Division into
Parts.

PART I.—PRELIMINARY—*ss.* 1-4.

PART II.—MONOPOLIES AND COMBINATIONS—
ss. 5-16.

PART III.—PENALTIES AND PROCEDURE—*ss.*
17-35.

PART IV.—GENERAL—*ss.* 36-37.

3. (1) The Monopolies Act, 1923, is hereby repealed.

Repeal of Act
1923 No. 54.
Saving.

(2) This Act shall not abrogate or impair the immunities and privileges conferred by the Trade Union Act, 1881, as amended by subsequent Acts.

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

Interpre-
tation.

“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 oath, if so required) on the subject that the Attorney-General or the person named by him shall ask.

“Australian goods” means any goods or services which are the product of any industry directed to produce goods or services carried on in the State of New South Wales, whether the same is carried on in other States or not.

“Contract” includes any arrangement or understanding between two or more persons, whether creating any legal obligation or not, whereby the conduct of such persons or any of them in relation to trade or commerce is or purports to be regulated, controlled, restricted, governed, or guided, or is intended to be regulated, controlled, restricted, governed, or guided.

“General trader” includes any person engaged in selling or distributing or controlling the sale or distribution of goods or services to retailers or to retailers and the public, and includes manufacturers and wholesalers.

“Perjury” includes false swearing.

“ Person ”

“ Person ” includes any association of persons whether incorporated or unincorporated, and includes a combination of separate and independent persons corporate or unincorporate whose voting power or determinations are controlled by—

- (a) a trust or corporation wherein the trustees or corporation hold the shares or interests of the constituent persons; or
- (b) a contract; or
- (c) a board of management or its equivalent; or
- (d) some similar means,

and includes any part or constituent person or agent of such combination.

“ Price ” means price at which a product or service is ordinarily sold including the price of the package and any service or article rendered or sold with or delivered with the product or service unless the price of such service or article can be ascertained from the circumstances of the transaction.

“ Produce documents ” means that the person on whom the obligation to produce documents is cast shall to the best of his power produce and hand over to the Attorney-General or to the person named by him all books, letters, documents, papers, writings, copies and extracts relating to the subject-matter mentioned.

“ Trade or commerce ” means the trade and commerce which the Parliament of New South Wales has power to regulate or any part of that trade or commerce.

PART II.

MONOPOLIES AND COMBINATIONS.

5. (1) Any person who monopolises or attempts to monopolise, or enters into a contract calculated to monopolise, or combines or conspires with any other person to monopolise trade or commerce is guilty of an indictable offence. Monopoly of trade.

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

6. It shall be a defence to proceedings for an offence under section five hereof and an answer to an allegation that a person has done the matters or any of them forbidden by that section if the person alleged to have contravened that section proves— Reduction in price a defence.

(a) that the effect of his action in contravention thereof has been and continues to be to reduce the price of the product and/or service which are the subject of the monopoly referred to in the proceedings or allegation ; or

(b) otherwise substantially to benefit the public.

7. (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 in restraint of or with intent to restrain trade or commerce is guilty of an offence. Restraint of trade.

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

8. It shall be a defence to proceedings for an offence under section seven hereof and an answer to an allegation that a contract or combination was made in restraint of or with intent to restrain trade or commerce if the person alleged to have contravened the section proves— Reduction in price a defence.

(a) that the effect of his action in contravention thereof has been and continues to be to reduce the price of the product and/or service which are

- are the subject of the contract or combination referred to in the proceedings or allegation ; or
- (b) otherwise substantially to benefit the public ; or
 - (c) if the contract or combination is ancillary to the sale, lease, or other disposition of any property, or to an agreement for employment, that his said action has been and continues to be not detrimental to the interests of the public, and reasonable as between himself and the other person or persons parties to the sale, lease, or other disposition or agreement.

9. It shall be evidence that a business is a monopoly and that a contract or combination is in restraint of trade or commerce or with intent to restrain trade or commerce if it is proved that there has been a general rising of the price of a product and/or service happening shortly after or as a result of the initiation of any combination or the making of any contract or the engaging in any combination in relation to trade or commerce in or concerned with any such product and/or service.

Evidence of monopoly and restraint of trade.

10. It shall not be a defence to a proceeding for an offence under section five or section seven hereof or an answer to any allegation founded thereon that the monopoly, contract, or combination therein referred to has been entered into in the reasonable interests of the parties thereto, and evidence raised against a defendant by and under section nine hereof shall not be rebutted merely by proving that the cost of production of the product and/or service has risen in a corresponding degree.

Onus of proof.

11. (1) Any person who either as principal or as agent enters into any contract or is or continues to be a member of or engages in any combination calculated to secure or which in fact secures that a general trader shall not supply or shall agree expressly or impliedly not to supply at reasonable prices and on fair terms Australian goods which are in competition with goods or services distributed or rendered by him is guilty of an offence.

Contracts not to supply and refusal to supply Australian goods.

(2) Any general trader who expressly or impliedly agrees not to supply and any general trader who

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who fails or refuses to supply to a customer at reasonable prices and on fair terms Australian goods which are in competition with goods or services ordinarily sold or rendered by him is guilty of an offence.

It shall be a defence to proceedings for an offence under this subsection in respect of a failure or refusal to supply if the general trader proves that he has applied to the persons who ordinarily supply such Australian goods and at the material time has been unable to obtain such goods at reasonable prices and on fair terms.

(3) Any person who either as principal or as agent enters into any contract or is or continues to be a member of or engages in any combination calculated to secure or which in fact secures that a general trader shall not supply goods or services to a customer at reasonable prices and on fair terms if such customer stocks or offers Australian goods which are in competition with any goods or services distributed or rendered by that general trader is guilty of an offence.

(4) Any retailer who without good cause neglects or refuses after reasonable notice to supply at reasonable prices and on fair terms Australian goods which are in competition with goods or services ordinarily sold or rendered by him is guilty of an offence.

It shall be a defence to proceedings for an offence under subsection four hereof if the retailer proves that he has applied to the person who ordinarily supplies him and at the material times has been unable to obtain such goods or services at reasonable prices and on fair terms.

12. (1) Any person who either as principal or as agent enters into any contract or is or continues to be a member of or engages in any combination calculated to secure or which in fact secures that a general trader shall not supply or shall agree expressly or impliedly not to supply any goods or services at his usual prices and on his usual terms to any person except upon terms express or implied that such person shall not sell or supply such goods or services or such goods and/or any other goods or services below a price fixed otherwise than by himself is guilty of an offence.

General trader not supplying goods or services except upon certain terms.

Monopolies.

(2) Any general trader who supplies goods or services to any person upon the terms express or implied, or who refuses to supply goods or services to any person except upon the terms express or implied that such person shall not sell or supply such goods or services or such goods and/or any other goods or services below a price fixed otherwise than by himself is guilty of an offence.

(3) Any general trader who refuses to sell or supply goods or services to any person for the reason express or implied that such person has sold, supplied, or bought similar goods or services or any other goods or services below a price fixed otherwise than by himself is guilty of an offence. It shall be evidence of such a refusal by a general trader if he has failed or refused to supply for cash at his usual price and on his usual conditions any goods or services to a person who has in fact sold, supplied, or bought such goods or services or other goods or services below a price fixed otherwise than by himself.

13. (1) Any person who either as principal or as agent enters into any contract or is or continues to be a member of or engages in any combination calculated to secure or which in fact secures that any general trader shall not supply or shall agree expressly or impliedly not to supply any Australian goods to any person except upon terms that he shall stock or supply other goods or services is guilty of an offence.

Not supplying Australian goods.

(2) Any general trader who refuses to supply any Australian goods to any person except upon the terms that he shall stock or supply other goods or services is guilty of an offence.

14. Any general trader who fails or refuses to supply for cash at his usual wholesale prices and on his usual terms any goods or services to a retailer of such goods or services is guilty of an offence :

General trader not supplying goods or services.

Provided that in any prosecution under this section it shall be a sufficient defence for the general trader to show that on the occasion in question there existed special circumstances which justified or excused his failure to comply with the provisions of the section.

15.

15. (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 the parties to any contract either in relation to any particular goods or services or generally, or
- (c) does not deal or has not dealt or does not intend to deal with any person either in relation to any particular goods or services or generally,

is guilty of an offence.

(2) Proof that a rebate, refund, discount, concession, or reward has been given or allowed in circumstances in which the same would not ordinarily be given or allowed shall be prima facie evidence of an offence against subsection one.

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

(4) 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 of substantial benefit to the public and constituted competition which was fair in the circumstances and was not destructive of or injurious to trade or commerce in any Australian goods.

16. Any person who in relation to trade or commerce either as principal or agent fails or refuses to sell or supply, or threatens not to sell or supply, to any other person any goods or services either at all or except

Improper refusal to sell or supply.

except at a price or on conditions less advantageous than his price and conditions usual in the circumstances for the reason express or implied that the person secondly mentioned—

- (a) deals or has dealt or will deal or intends to deal 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 with a person who is not a party to any contract ; or
- (c) does not deal or has not dealt or does not intend to deal with any person either in relation to any particular goods or services or generally ; or
- (d) is using or proposes to use any Australian goods,

is guilty of an offence.

It shall be evidence of a breach of this section if the first-mentioned person has failed or refused to supply for cash at his usual price and on his usual terms any goods or services to a person to whom any of the preceding paragraphs (a), (b), (c), or (d) applies.

PART III.

PENALTIES AND PROCEDURE.

17. Every person who aids, abets, counsels, or procures, or in any way is knowingly concerned in the commission of an offence, shall be deemed to have committed the offence. Aiders and abettors.

18. Every person who commits an offence after having been previously convicted of an offence shall be guilty of an indictable offence. Second offences.

19. (1) Every person who commits an offence shall unless this Act otherwise provides be liable to a penalty not exceeding *five hundred* pounds. General penalty.

(2) Every person who commits an indictable offence shall be liable to a penalty not exceeding *five hundred* pounds or to imprisonment for a period not exceeding *twelve* months or to both. Punishment for indictable offences. (3)

(3) Every person who commits an offence against section five or section seven of this Act shall in addition to other penalties and punishment provided be liable to a penalty not exceeding *one hundred* pounds for each day during which the offence continues. Additional daily penalty.

20. (1) Except where proceedings by indictment are instituted for an indictable offence proceedings for the recovery of a pecuniary penalty for an offence other than an offence against sections twenty-nine, thirty-one, or thirty-two shall be instituted by way of civil action. Civil action for penalties.

(2) Instead of proceeding by indictment for an indictable offence the Attorney-General may elect to institute proceedings by way of civil action for the recovery of pecuniary penalties.

(3) Any proceedings under this Act for an indictable offence or for an injunction or for the recovery of a pecuniary penalty shall not be instituted except by the Attorney-General or by some person authorised by him.

21. 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 Act or by reason of any act or thing done in contravention of any injunction granted in pursuance of this Act may sue for and recover treble damages for the injury in the Supreme Court of New South Wales in its common law jurisdiction. Treble damages recoverable by person injured.

22. In any proceeding for an offence against this Act or for an injunction or for damages no person shall 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 incriminate or tend to incriminate him or render him liable to a penalty, and his answers shall be admissible in evidence against him or any other person in any proceeding under this Act, but not in any criminal proceeding other than under this Act except a prosecution for perjury. Interrogatories, discovery, &c.

23. (1) A civil action under section twenty hereof for the recovery of a pecuniary penalty may be instituted in the Supreme Court either at common law or in equity, and shall be tried before a judge without a jury. Trial of civil action for penalty.

(2) The judge before whom the action is tried may exercise any power or jurisdiction of the Supreme Court at common law or in equity.

(3) Any judge of the Supreme Court may upon application by or on behalf of the Attorney-General grant an injunction restraining any person, his servants or agents from the commission, repetition, or continuance of any offence under this Act.

(4) 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.

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

24. An indictment for an offence against this Act shall be tried before the Supreme Court of New South Wales by a judge of the Supreme Court with a jury. Trial of indictment.

25. In any proceeding for an offence against this Act or for an injunction any indictment, summons, information, declaration, statement of claim, conviction, warrant, or other process shall suffice if the offence or act complained of is set out as nearly as may be in the words of this Act. Indictment, &c., may follow the Act.

26. In any proceeding for an offence against this Act or for an injunction or for the recovery of damages for anything done by any person in contravention of this Act or of any injunction granted under this Act wherein a contract, combination, or conspiracy or attempted combination or conspiracy in contravention of this Act is alleged or concerned, any book, letter, document, paper, or writing containing or purporting to contain— Certain books, &c., to be evidence.

- (a) any minute, note, record, or memorandum of any proceedings at any meeting of the persons or any one of the persons alleged to have been parties or privy to the contract, combination, conspiracy, or attempt; or
- (b) any entry purporting to be a copy of or extract from any such book, letter, document, paper, or writing,

shall,

shall, upon proof that it came from the custody of those persons or any one of them or of a responsible officer or representative of those persons or any of them—

- (a) be admissible in evidence against those persons; and
- (b) 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 persons thereby appearing to have been present at the meeting were so present.

27. In any proceeding for an offence against or injunction under this Act or for the recovery of damages for anything done by any person in contravention of this Act or of any injunction granted under this Act any book, letter, document, paper, or writing or anything purporting to be a copy or extract from any book, letter, document, paper, or writing containing any reference to any matter alleged to have been done or omitted in contravention of this Act or to anything concerned therewith shall upon proof that it was produced by or came from the custody of a person charged with the offence or against whom the claim for damages is made or a responsible officer or representative of that person—

Certain books, &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.

28. In any prosecution for an offence against or injunction under 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: Provided that—

Certain averments deemed proved.

- (a) Subject to this Act, an averment of intent shall not be deemed sufficient to prove the intent averred; and
- (b)

(b) in all proceedings for an indictable offence the guilt of the defendant must be established by evidence.

29. (1) The Attorney-General may, by writing under his hand, require any person whom he believes to be capable of giving any information in relation to any breach or alleged breach of this Act to answer questions and to produce documents of any kind in relation to the subject-matter of the breach or alleged breach of this Act, and any person who refuses or fails to answer questions or produce documents when required to do so in pursuance of this section shall be guilty of an offence.

Attorney-General may require a person to answer questions and produce documents.

(2) The Attorney-General or any person appointed by him may inspect all books, letters, documents, papers, writings, copies and extracts produced in pursuance of this section and may take copies thereof or extracts therefrom.

(3) The Attorney-General or any person appointed by him may impound or retain any book, letter, document, paper, writing, copy or extract produced to him or to such person in pursuance of this section, but the person entitled to such book, letter, document, paper, writing, copy or extract shall in lieu thereof be entitled to a copy certified as correct by the Attorney-General or the person named by him, and such certified copy shall be received in all courts as evidence of equal validity with the original. Any person who obstructs the Attorney-General or person appointed by him in the exercise of any power conferred by this section shall be guilty of an offence.

(4) No person shall be excused from answering any question or producing any book, letter, document, paper, writing, copy or extract when required to do so under this section on the ground that such answer or such production may incriminate or tend to incriminate him or make him liable to a penalty, and his answers shall be admissible in evidence against him or any other person in any proceeding under this Act, but not in any criminal proceeding other than under this Act except a prosecution for perjury.

30. (1) Any judge of the Supreme or District Court, stipendiary magistrate, barrister-at-law of five years' standing, or permanent officer of the Public Service of ten years' standing, may be appointed by the Attorney-General to make an inquiry into any of the following matters, namely, whether there is or has been—

Inquiry may be directed by Attorney-General into certain matters.

- (a) any breach or attempted breach of any of the provisions of this Act ;
- (b) any combination, scheme, arrangement or device for limiting or regulating the output or supply, or for raising, maintaining, or regulating the price of any goods or service ;
- (c) any combination, scheme, arrangement or device for limiting or excluding competition in trade or commerce ;
- (d) any abuse of the power to control, regulate, or direct trade or commerce, and any unfair, harsh or improper dealing by any person towards another for the purpose of enforcing or attempting such control, regulation, or direction ;

and such person shall report to the Attorney-General the result of the inquiry, and may make such recommendations as he thinks proper.

(2) Any such inquiry or any part thereof may be held in public.

31. Any person appointed by the Attorney-General to make any inquiry under the last preceding section hereof shall, except as hereinafter expressly provided, have the powers, rights, and privileges of a sole commissioner within the meaning of the Royal Commissions Act, 1923, and the provisions of the Royal Commissions Act, 1923, with the exception of Division 2 of Part II, shall apply to and with respect to the inquiry except that—

Powers of person conducting the inquiry.

- (a) no person shall on the ground that he may be incriminated or on the ground of privilege or on any ground whatsoever fail or refuse to answer questions or produce or hand over to the person making the inquiry any book, letter, document, paper, writing, copy or extract which he is summoned

summoned to produce upon such inquiry, and if he does so fail or refuse he is guilty of an offence under this Act; and

- (b) the answers of any witness upon any such inquiry shall be admissible in evidence against him or any other person in any proceeding under this Act, but not in any criminal proceeding other than under this Act except a prosecution for perjury.

32. No person appointed by the Attorney-General shall disclose any information gained by him in the exercise of the powers conferred by any of the last three preceding sections except—

Certain information not to be disclosed.

- (a) to the Attorney-General or some person authorised by him; or
- (b) when giving evidence in any proceeding or inquiry or taking evidence in any inquiry under this Act.

33. Every director of a company and any officer thereof who is competent to make admissions for or against the company when engaged in the company's business shall be deemed to be engaged in the company's business and competent to make admissions for or against the company when giving any evidence, making any statement, or answering any question in any proceeding or inquiry under this Act.

Admissions by directors and others.

34. (1) Any person guilty of an offence against sections twelve, fifteen, or sixteen of this Act shall be liable to a penalty not exceeding *one hundred* pounds, which may be recovered as provided in subsection one of section twenty-three hereof.

Penalties for offences against certain sections.

(2) Any person guilty of an offence against sections twenty-nine, thirty-one, or thirty-two of this Act shall be liable to a penalty not exceeding *two hundred* pounds, which may be recovered before a police or stipendiary magistrate or two or more justices in a summary manner.

35. In any proceedings for an injunction or for an offence against this Act other than proceedings for the commitment for trial of a person charged with an indictable offence the court may award costs against any party.

Costs.

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PART IV.

GENERAL.

36. (1) The Governor may make regulations for Regulations. giving effect to this Act.

- (2) The regulations shall—
- (a) be published in the Gazette ;
 - (b) take effect from the date of publication or from a later date specified in the regulations ;
 - (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not, then within fourteen days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.

(3) The regulations may impose a penalty for any breach thereof, but no such penalty shall exceed *fifty* pounds.

(4) Any penalty imposed by the regulations may be recovered before a police or stipendiary magistrate or any two or more justices in a summary manner.

37. This Act shall be read and construed subject to the Constitution of the Commonwealth of Australia and subject to the Constitution of the State of New South Wales, and so as not to exceed the legislative power of the State of New South Wales to the intent that where any enactment thereof would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent of which it is not an excess of that power.

Construction of Act.