

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1914.

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# A BILL

Relating to contracts and combinations in restraint of trade and monopolies; and to amend the Industrial Arbitration Act, 1912.

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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 "Restraint of Trade Short title. Prevention Act, 1914."
- 2.** Sections seventy and seventy-one of the Industrial Repeal. Arbitration Act, 1912, are hereby repealed.

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3. Any person who, either as principal or agent, makes or enters into any contract or agreement, or is or continues to be a member of, or engages in any combination or conspiracy in restraint of or with intent to restrain—

Contract or combination in restraint of trade or production. c.f. A. I. P. Act, 1906-1910, s. 4, Sherman Act (U.S.), s. 1.

(a) the production or manufacture of, or trade, or commerce in any commodity, or article of commerce ; or

(b) the supply of any services ;

shall be liable to a penalty not exceeding *five hundred* pounds, and in the case of a continuing offence, to a penalty not exceeding *five hundred* 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) It shall be a defence to a proceeding for an offence under this section and an answer to an allegation that a contract was made or entered into in contravention of this section if the person who is alleged to have contravened this section proves that the contract, agreement, combination, or conspiracy alleged was not to the detriment of the public and that the restraint effected or intended was not unreasonable.

4. (1) Any person who monopolizes or attempts to monopolize or combines or conspires with any other person to monopolize—

Monopoly. c.f. A. I. P. Act, s. 7, Sherman Act, s. 2.

(a) the production or manufacture of, or the trade or commerce in, any commodity or article of commerce, or any part thereof ;

(b) the supply of any services, or any part thereof, shall be guilty of an offence and shall be liable to a penalty not exceeding *five hundred* pounds ; and in the case of a continuing offence, shall be liable to a penalty not exceeding *five hundred* pounds for each day on which such offence continues.

(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 proceeding for an offence under this section and an answer to an allegation that

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that a contract was made or entered into in contravention of this section if the person who is alleged to have contravened this section proves that the monopoly, or attempt or combination or conspiracy to monopolize alleged, was not to the detriment of the public.

**5.** (1) Any person who, 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, subsidy, or reward for the reason or upon the condition, express or implied, that the latter person—

Unfair concessions.  
cf. A. I. P. Act, s. 7A.

- (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) 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,

shall be guilty of an offence, and shall be liable to a penalty not exceeding *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 the section was not to the detriment of the public.

**6.** (1) Any person who, 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.  
cf. A. I. P. Act, s. 7B.

- (a) has dealt, or deals, or will deal, or intends to deal with any person ; or
- (b) has sold, or sells, or will sell, or intends to sell the particular goods, or any goods, below a stated price,

shall be guilty of an offence, and shall be liable to a penalty not exceeding *five hundred* pounds. (2)

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(2) Any person who, either as principal or agent, sells or supplies to any other person any goods or services upon the condition, express or implied, that the latter person—

- (a) has not dealt, or does not deal, or will not deal, or does not intend to deal, with any person ;
- (b) has not sold, or does not sell, or will not sell, or does not intend to sell, the particular goods, or any goods, below a stated price,

shall be guilty of an offence, and shall be liable to a penalty not exceeding *five hundred* pounds.

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

**7.** Any offence against sections three, four, five, six, <sup>Second offence.</sup> or nine of this Act committed by a person who has <sup>cf. A. I. P. Act, s. 13 (2).</sup> previously been convicted of any offence against any of such sections 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.

**8.** (1) On the conviction of any person for an offence <sup>Injunction.</sup> against this Act, the court shall, upon application by or <sup>cf. A. I. P. Act, s. 10 (2).</sup> on behalf of the Attorney-General, or any person thereto authorised by him, grant an injunction restraining the convicted person and his servants or agents from the repetition or continuance of the offence of which he has been convicted.

(2) Any person who does any act or thing in <sup>Ibid. s. 10A.</sup> disobedience to an injunction granted under this section shall be guilty of an offence and shall be liable to a penalty of *five hundred* pounds for each day during which the offence continues.

(3) The last preceding subsection shall not <sup>Ibid s. 10A (2).</sup> derogate from the power of the Supreme Court to enforce obedience to the injunction in any way that would otherwise be open to it.

**9.** Whoever aids, abets, counsels, or procures, or by <sup>Aiding and abetting.</sup> act or omission is in any way directly or indirectly <sup>A. I. P. Act, s. 9.</sup> knowingly

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knowingly concerned in or privy to the commission of any offence against this Act, or to the doing of any Act outside New South Wales which would, if done within New South Wales, be an offence against this Act, shall be deemed to have committed the offence, and shall be punishable accordingly.

**10.** Proceedings for the recovery of pecuniary penalties for offences against this Act may be taken in the Supreme Court by the Attorney-General, or some person authorised by him, by way of civil action, before a judge without a jury.

Recovery of penalty.  
A. I. P. Act,  
s. 13.

**11.** In any proceeding for an offence against 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.

Form of information, &c.

**12.** No person shall, in any proceeding for an offence against this Act, be excused from answering any question, or from making any discovery of documents, on the ground that the answer or discovery might 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.  
A. I. P. Act,  
s. 14B.

**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 sections three, four, five, six, or nine of this Act, may, in the Supreme Court, before a judge without a jury, sue for and recover treble damages for the injury.

Action for treble damages.  
A. I. P. Act,  
s. 11.  
Sherman Act,  
s. 7.

(2) No person shall, in any proceeding under this section, be excused from answering any question or 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 answers.

(3) In any proceedings under this section proof that a person has been convicted of having committed any specified act or thing in contravention of sections three, four, five, six, or nine of this Act shall be deemed to be proof that he committed that act or thing.

**14.**

**14.** (1) No person shall, either as principal or agent, give, offer, or promise to any other person, nor shall such other person accept, any rebate, refund, discount, concession, subsidy, or reward in respect of, or on condition of, or in consideration of, the purchase by the latter person of any cattle sent to any public sale-yards for sale, or any meat derived from any cattle sent to any public abattoir or licensed slaughterhouse for slaughter.

Rebate on purchase of cattle.

(2) Any person contravening this section shall be guilty of an offence, and shall be liable to a penalty not exceeding *five hundred* pounds :

Provided that it shall be a defence to a charge of an offence under this section if the person alleged to have contravened the section proves that the giving, offering, promising, or accepting of such rebate, refund, discount, concession, subsidy, or reward has caused no detriment to the public ; " cattle " for the purposes of this section includes sheep, lambs, pigs, goats, and bovine cattle.

**15.** (1) If, on complaint in writing to the Attorney-General that an offence has been committed against this Act, or without such complaint, the Attorney-General believes that an offence has been committed against this Act, he may, by writing under his hand, require any person, or in the case of a corporation a director, or the manager, secretary, treasurer, or other officer or member of the corporation whom he believes to be capable of giving any information in relation to the offence which he believes has been committed to answer questions and to produce documents in relation to such offence to him or to some person named by him:

Power to require answers to questions and production of documents.  
A. I. P. Act, s. 15B.

(2) If any person required by the Attorney-General to answer questions or to produce documents under the last preceding subsection, shall fail to answer truly and to the best of his knowledge, information, and belief all such questions asked by the Attorney-General or the person named by him, either orally or in writing, or to produce to the Attorney-General or the person named by him all documents in his custody, possession, or control relating to the subject matter mentioned, he shall be guilty of an offence, and shall be liable to a penalty not exceeding *fifty* pounds.

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(3) The Attorney-General, or any person to whom 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 or make him liable to a penalty; but neither his answer nor any document produced by him shall be admissible in evidence against him in any civil or criminal proceeding other than a proceeding for an offence against this Act.

**16.** (1) No person shall disclose any information gained by him in the exercise of the powers conferred by the last preceding section except so far as may be necessary for the purposes of a proceeding for an offence against this Act. Information not to be disclosed. cf. A. I. P. Act, s. 15x.

(2) Any person contravening this section shall be liable to a penalty of *fifty* pounds.

