

PROFITEERING PREVENTION.

3° GEO. VI., No. IX.

No. 9 of 1939.

AN ACT for the prevention of Profiteering and for other incidental purposes.

[Assented to 13th October, 1939.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Profiteering Prevention Act, 1939.* Short title.

2. This Act shall operate and apply as being absolutely separate and distinct from the Wheat Products (Prices Fixation) Act, 1938 (No. 17 of 1938), and the terms and provisions of this Act shall have no relation whatsoever to the terms and provisions of the Wheat Products (Prices Fixation) Act, 1938 (No. 17 of 1938), aforesaid. Q. No. 33 of 1920, s. 1. This Act to operate separately from the Wheat Products (Prices Fixation) Act, 1938.

3. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and Construction.

so as not to exceed the legislative power of the State to the intent that where any provision of this Act would but for this section be in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Act divided
into Parts.

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

PART I., SS. 5 to 11—PRELIMINARY.

PART II., SS. 12 to 16—PRICES OF COMMODITIES.

PART III., SS. 17 to 19—COMBINES, ETC.

PART IV., SS. 20 to 35—MISCELLANEOUS.

PART I.—PRELIMINARY.

Interpreta-
tion.

See *ibid.* s. 8.

cf. N.S.W.
No. 41 of
1920, s. 4.

5. In this Act, unless the context otherwise indicates, the following terms have the meanings respectively set against them, that is to say:—

“Commercial trust”—Any association or combination (whether incorporated or not) of any number of persons having as its object or purpose or as one of its objects or purposes—

(a) controlling or influencing the supply or demand or price of any commodity; or

(b) creating or maintaining a monopoly in the supply or demand of any commodity.

“Commissioner”—The Commissioner of Prices appointed from time to time, under this Act.

“Commodity”—Any of the following:—

(a) Except as hereinafter provided any article of food or drink for man or for any domesticated animal;

(b) Firewood or other fuel;

(c) Any article of clothing or apparel for man;

(d) Any article which enters into or is used in the composition or preparation of any of the foregoing commodities;

(e) Agricultural implements (except tractors), bicycles, motor vehicles, spare parts and accessories for all classes of vehicles, machinery, and implements, and seeds for sowing;

(f) Any public utility, and in particular without limiting the generality of this expression, the supply of light, heat, and power;

- (g) Freights and transport charges;
- (h) All goods, wares, or merchandise;

but shall not include flour or wheat products as defined in and for the purposes of the Wheat Products (Prices Fixation) Act, 1938 (No. 17 of 1938), or any other commodity or substance to which that Act refers or applies, or any essential or other article the subject of any order made under the Defence (National Security—General) Regulations made under the Defence Act, 1903-1939 (Commonwealth).

“Declared price”—The maximum selling price of any commodity as fixed and declared under this Act.

“Document” includes book, letter, document, paper, or writing, and any entry or memorandum in the same.

“Member of a commercial trust” includes the person or persons managing and controlling that trust: Where any constituent person or agent is a corporation, firm or association the term includes every director, manager, or partner of that corporation, firm or association.

“Minister”—The Minister of the Crown for the time being or from time to time charged with the administration of this Act.

“Owner” includes not only the person owning the commodity in question but also every person having and who has entered into possession under any mortgage, encumbrance, right, lien, charge, or other interest over or in such commodity. The term also includes the Crown.

“Place”—Any works, factory, warehouse, wharf, building, structure, ship, vessel, barge, punt, boat, airship, aeroplane, railway, tramway, siding, land, station, farm, holding, road, highway, or other place or premises whatsoever.

“Prescribed date” means the 31st day of August, one thousand nine hundred and thirty-nine, or where in relation to any particular class or kind

of goods a trader did not on that date make a sale of goods comparable as regards place, class, kind, terms, and conditions, the last date prior thereto upon which that trader made such a comparable sale.

“Prevailing price” means in relation to any trader, the price whether wholesale or retail charged by that trader for the sale, on the prescribed date, at the same place and on the same terms and conditions of goods of that class or kind.

“Price” includes every valuable consideration whatsoever, whether direct or indirect.

“Retail” means, in relation to any price, the price to a person for the purposes of consumption or use.

“Sale” includes barter and every other disposition of commodities for valuable consideration.

“Trader”—Any person carrying on the business of selling any commodities by any means whatsoever and whether by wholesale or retail: the term includes the agent of any such person.

“Wholesale” means, in relation to any price, the price to a person for purposes of resale.

In the case of any service rendered to the public or any other thing declared by or pursuant to this Act to be a commodity, the term includes the person exercising control over such service or thing.

Power to
declare com-
modities.

Ibid. s. 4.

6. (1) The Governor may from time to time by proclamation declare the commodities to which this Act shall apply.

(2) Every proclamation in pursuance of this section shall, in addition to being published in the *Gazette*, be published in such newspapers and otherwise in such manner as the Commissioner thinks sufficient for giving information to all persons interested.

Appointment
of Commis-
sioner of
Prices.

Ibid. s. 5.
cf. N.S.W.
No. 41 of
1920, s. 5.

7. The Governor may from time to time appoint a Commissioner of Prices, and fix the remuneration for such officer.

8. In the administration of this Act the Commissioner shall be subject to the direction and control of the Minister.

Administration
of Act.
Ibid. s. 6.

9. (1) A secretary to the Commissioner, and such other employees as may be necessary to assist in the administration of this Act, may be appointed under the provisions of the Public Service Act, 1904-1935, either separate from or in conjunction with any other public office, and either permanently or temporarily.

Secretary and
other officers.
Ibid. s. 7.

(2) Every such officer shall be bound to secrecy by declaration in the prescribed form.

10. The signature of the Commissioner shall be judicially noticed.

Judicial
notice.

11. The Commissioner may at his own discretion, or at the request of any member of the public, upon good cause shown and shall, when required so to do by the Minister, investigate and report to the Minister upon all or any of the following matters:—

Duties of the
Commissioner
as to investi-
gations.
See *ibid.* s. 9.

- (i) the state of the prices of any commodity in this State or in any part thereof, and at any time or times;
- (ii) the quantity, situation, demand, supply, or possession of any commodity in this State or in any part thereof;
- (iii) the means or sufficiency and cost of the supply or transport of any commodity;
- (iv) the probable requirements of the people of this State or of any part thereof in regard to any commodity;
- (v) any act or attempt by any person to raise or maintain the price of any commodity;
- (vi) as to what from time to time should be the maximum selling prices of any commodity, under then existing market conditions and circumstances, for this State or any part thereof, and as to what from time to time shall be "reasonable quantities" of any commodity within the meaning of paragraph (b) of section fourteen of this Act;

- (vii) the necessity or advisability of the exercise of any of the powers conferred by this Act.

PART II.—PRICES OF COMMODITIES.

Prevailing price to be charged until varied.

12. The wholesale and retail maximum price to be charged by any trader for any commodity shall, subject to any variation made in accordance with the provisions of this Act, be the prevailing price current on the prescribed date.

Declaration of maximum prices.
See *ibid.* s. 10.
cf. N.S.W. No. 41 of 1920, s. 16.

13. (1) The Governor may from time to time, on the report and advice of the Commissioner under section eleven of this Act, by proclamation—

(i) Fix and declare for any commodity—

- (a) the maximum price;
- (b) different maximum prices according to differences in quality or description or in the quantity sold, or in respect of different conditions, terms, or localities of trade, commerce or sale; or
- (c) different maximum prices for different parts of the State;
- (d) maximum prices on a sliding scale;
- (e) maximum prices on a condition or conditions;
- (f) maximum prices for cash, delivery, credit or time payment, and in either case inclusive or exclusive of the cost of packing;
- (g) maximum prices on a percentage basis on landed or other cost;
- (h) maximum prices according to or upon any principle or condition prescribed;
- (i) what shall be "reasonable quantities" of any commodity within the meaning of paragraph (b) of section fourteen of this Act.

(ii) In fixing and declaring any price, do so relatively to such standards of measurement, weight, capacity or otherwise howsoever as he thinks proper; or so that such price shall vary in accordance with a standard or time or other circumstance, or shall vary with profits, dividends, or wages;

(iii) Vary any price previously fixed, but so as to apply only to future transactions.

(2) The Governor may by a subsequent proclamation revoke or vary any such proclamation.

(3) Every such proclamation shall take effect upon the publication thereof in the *Gazette*, or upon a later date, to be thereby fixed.

14. It shall be unlawful and an offence against this Act for any trader, whether as principal or agent—

Sale at higher than declared price unlawful.

(a) to sell or agree to sell or offer for sale any commodity at a price higher than the declared price, or, where there is no declared price, at a price higher than the prevailing price, or to sell any commodity for which a declared price is fixed and thereafter demand for the same a price higher than the declared price;

See *ibid.*, s. 12.
cf. N.S.W.
No. 41 of
1920, s. 24.

(b) to refuse to sell in reasonable quantities at the declared price, or, where there is no declared price, at a price higher than the prevailing price any commodity under his control:

Provided that the Commissioner may from time to time authorise and permit any trader to withhold from sale any commodity or any quantity thereof;

(c) in any prosecution under this section it shall be a sufficient defence to show that on the occasion in question—

(i) the defendant supplied a reasonable quantity of the commodity, or had not a sufficient quantity of the commodity in his custody or under his control to supply the quantity demanded, in addition to the quantity required to satisfy all other contracts then subsisting, under which he was obliged to supply quantities of the commodity and the ordinary requirements of his business; or

(ii) the defendant was a wholesale trader in the commodity and the person who demanded to be supplied was not a retail trader therein.

For the purposes of this section in determining what is a reasonable quantity, regard shall be had to all the circumstances of the case, including the question whether the person who demanded to be supplied was or was not at the time of the demand carrying on business as a retail trader in the commodity demanded, either alone or with other goods.

Returns of
commodities.
Ibid. s. 13.

15. (1) The Commissioner may from time to time, by notification published in the *Gazette* and in such newspapers as he shall deem fit—

- (a) order that all traders in any specified part of the State having in their possession or control a quantity of a commodity to which a proclamation under section six of this Act relates shall furnish to the Commissioner returns of such commodity within such time and at such intervals as may be prescribed;
- (b) order that any such commodity shall not be withheld from sale in excess of a quantity fixed by such order.

(2) Any trader who fails to so furnish any such return or wilfully furnishes a false return, or has in possession any commodity which has not been duly included in such return, shall be guilty of an offence against this Act.

Seizure of
commodities
withheld from
sale.
Ibid. s. 14.

16. (1) Where the Commissioner considers that any commodity which in his opinion should be distributed for public use is being withheld from sale, he may so report to the Minister.

(2) The Governor may thereupon by notice in the *Gazette*, authorise the seizure and distribution of such commodity by the Commissioner, paying therefor the declared price less such sum as he thinks reasonable to cover the expenses of seizure and distribution; and any person acting under the authority of the Commissioner may enter any place in which such commodity is or is suspected to be, and use such force as may be necessary.

PART III.—COMBINES, ETC.

Illegal con-
cessions.
Ibid. s. 15.
cf. N.S.W.
No. 41 of
1920, Part 3

17. Every person commits an offence against this Act who either as principal or agent in respect of dealings in any commodity gives or agrees to give to any

other person any rebate, discount, reward or other valuable consideration, for the reason or upon the express or implied condition that the latter person—

- (a) deals or has dealt or will deal exclusively or principally with any person or class of persons, or with a commercial trust, or the members or any member thereof, in relation to such commodity; or
- (b) does not deal or has not dealt or will not deal with any person or class of persons in relation to any such commodity; or
- (c) restricts or has restricted or will restrict his dealings with any person or class of persons in relation to any such commodity; or
- (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 in obedience to or in conformity with the directions of a commercial trust with respect to the sale, purchase or supply of such commodity.

Provided this section shall not apply to dealings or undertakings in the usual and ordinary course of business or trade.

18. Every person commits an offence against this Act who either as principal or agent refuses either absolutely or except upon disadvantageous conditions to sell or supply to any other person or to purchase from any other person any commodity—

Illegal
refusals to
deal.
See *ibid.* s. 16.

- (i) For the reason that the latter person—
 - (a) does not deal or has not dealt or will not undertake to deal with any person or class of persons or with a commercial trust or the members or any member thereof in relation to any such commodity; or
 - (b) is not or will not undertake to become a member of a commercial trust; or
 - (c) does not act or does not intend to act in conformity with the directions of a commercial trust with respect to the sale, purchase, or supply of such proclaimed commodity.

- (ii) In obedience to or in consequence of or in conformity with the directions of a commercial trust.

Illegal
monopolies.
Ibid. s. 17.

19. Every person commits an offence against this Act who—

- (a) monopolises or attempts to monopolise or combines or conspires with any other person to monopolise wholly or partially the demand or supply in this State or any part thereof of any proclaimed commodity; or
- (b) combines or conspires with any other person to control wholly or partially the demand or supply or price in this State or any part thereof of any proclaimed commodity;

if such monopoly or control is of such a nature as to be contrary to the public interest.

PART IV.—MISCELLANEOUS PROVISIONS.

Powers of
Commissioner.
Ibid. s. 20.

20. (1) The Commissioner, when holding any inquiry or investigation for any of the purposes of this Act, shall have all the powers, rights, and privileges of a Royal Commission under the Royal Commissioners' Powers Act, 1902, and shall be deemed to have been appointed by the Governor as a Royal Commissioner under that Act, and all the provisions of that Act shall apply.

(2) He may by himself or by any person appointed by him in that behalf enter and inspect any place and any commodities and other things the entry or inspection of which appears to him to be requisite.

(3) He may receive evidence on affidavit; but he may require any person who has given evidence on affidavit to attend before him for oral examination or cross-examination.

(4) He may, if he thinks proper, take evidence in public or private.

(5) In the exercise of any of his functions or powers, he may refer any technical matter to an expert and may accept his report as evidence.

(6) No person shall be excused from answering any question put to him or from producing any document on

the ground that the answer to the question or the production of the document would tend to criminate him in respect of any offence against this Act.

(7) The Commissioner may issue an order to any person to take evidence on his behalf in relation to any matter, and that person shall have all the powers of the Commissioner in relation to the summoning of witnesses, the production of documents, and the taking of evidence.

Power to issue orders to take evidence.

21. A statement or disclosure made by any witness in answer to any question put to him by the Commissioner shall not (except in proceedings for an offence against this Act) be admissible in evidence against him in any civil or criminal proceedings in any court.

Statements made by witness not admissible in evidence against him.
Ibid. s. 22.

22. The Commissioner may, in the exercise of any of his functions, act in conjunction with any person or body appointed and acting under any Act of the Parliament of any other State of the Commonwealth or of the Parliament of the Commonwealth, having objects similar to the objects of this Act.

Commissioner may act in conjunction with other bodies.
Ibid. s. 23.

23. The Commissioner may publish such (if any) information obtained in the exercise of his functions as he thinks fit.

Power to publish information.
Ibid. s. 24.

24. (1) If the Commissioner has at any time reason to suspect that—

Power of entry and seizure in certain cases.

(a) any person has been guilty of any offence against this Act with respect to any commodity under investigation pursuant to section eleven of this Act; or

Ibid. s. 25.

(b) any such commodity is kept, stored, or had in possession and has not been duly included in any prescribed return;

he may, by an order, authorise any State officer to seize, take possession of, carry away, and detain such commodity, and for such purpose, with any necessary assistants, to enter any place and search for such commodity and to use such force as may be necessary, and, if necessary, open any chests, packages, or other things in which any such commodity is or is supposed to be.

(2) Any order under this section may be transmitted by means of a telegram, which shall be of equal validity as if it were under the hand of the Commissioner.

(3) If after due investigation by the Commissioner it is found that such person was not guilty of any offence as aforesaid, then any goods seized or carried away shall be returned to the person, or due compensation shall be paid to such person.

Obstructing
officers and
similar
offences.
Ibid. s. 26.

25. Any person who—

- (a) resists, hinders, or obstructs the Commissioner or any officer or person in performance of any duties or the exercise of any powers under this Act; or
- (b) wilfully misleads the Commissioner or any officer or person in any particular likely to affect the discharge of his duty under this Act,

shall be guilty of an offence against this Act.

Penalty: Two hundred pounds or imprisonment with or without hard labour for six months, or both.

Punishment
for false evi-
dence.
Ibid. s. 27.

26. Any person who upon oath gives any evidence which in any material particular is to his knowledge false, before the Commissioner shall be guilty of perjury and be punishable accordingly.

Bribery of
witness.
Ibid. s. 28.
N.S.W. No.
40 of 1920,
s. 36.

27. (1) Any person who—

- (a) gives, confers, or procures or promises or offers to give, confer, or procure, any property or benefit of any kind to, upon, or for any person upon any agreement or understanding that any person called or to be called as a witness before the Commissioner shall give false testimony or withhold true testimony; or
- (b) by any means induces a person called or to be called as a witness before the Commissioner to give false testimony, or to withhold true testimony; or
- (c) asks, receives, or obtains, or agrees to receive or obtain, any property or benefit of any kind for himself, or any other person, upon any

agreement or understanding that any person shall as a witness before the Commissioner give false testimony or withhold true testimony; or

- (d) practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing to any person called or to be called as a witness before the Commissioner, with intent to affect the testimony of that person as a witness; or
- Fraud on witness.
Ibid. s. 28.
N.S.W. No. 40 of 1920, ss. 37, 38, 39, 40 and 41.
- (e) knowing that any document is or may be required in evidence before the Commissioner wilfully destroys it, or renders it illegible or undecipherable or incapable of identification with intent thereby to prevent it from being used in evidence; or
- Destroying documents.
- (f) wilfully prevents any person who has been summoned to attend as a witness before the Commissioner from attending as a witness, or from producing any evidence pursuant to the summons to attend; or
- Preventing witness from attending.
- (g) uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of his having appeared as a witness before the Commissioner or for or on account of any evidence given by him before the Commissioner; or
- Injury to witness.
- (h) being an employer, dismisses any employee from his employment, or prejudices any employee in his employment for or on account of such employee's having appeared as a witness before the Commissioner or for or on account of such employee's having given evidence before the Commissioner,
- Dismissal by employers of witness.

shall be guilty of an offence against this Act.

Penalty: Two hundred pounds or imprisonment with or without hard labour for six months, or both; or, if the offender is a corporation, five hundred pounds.

(2) In any proceedings for any offence against paragraph (h) of subsection (1) of this section, it shall lie upon the employer to prove that any employee shown to have been dismissed or prejudiced in his employment was so dismissed or prejudiced for some reason other than a reason mentioned in such paragraph.

Recovery of penalties.
Ibid. s. 29.

28. (1) All offences against this Act may be prosecuted and punished by complaint under the Justices Act, 1902-1936.

Forfeiture.
cf. N.S.W. 1920, s. 49.

(2) In case of any conviction the adjudicating court may order the forfeiture of all or any part of any commodity with respect to which the offence was committed, or the value thereof, which value shall be determined by such court.

General penalty.
See *ibid.* s. 29.
cf. N.S.W. No. 40 of

29. (1) Any person who commits an offence against this Act for which no other penalty or punishment is expressly provided shall be liable—

(a) for a first offence, to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour, for any term not exceeding three months, or, if the offender is an incorporated company or association, to a penalty not exceeding two hundred pounds; and

(b) for a second or subsequent offence to a penalty not exceeding two hundred pounds, or to imprisonment with or without hard labour for any term not exceeding six months, or to both, or, if the offender is an incorporated company or association, to a penalty not exceeding five hundred pounds.

Offences by corporations.
Ibid. ss. (5).
N.S.W. No. 41 of 1920, s. 44.

(2) Where a person convicted of any offence against this Act is an incorporated company or association, every director, and every officer concerned in the management of the corporation, shall be guilty of the like offence, unless he proves that the act which constituted the offence took place without his knowledge or without his consent.

Joint offenders.

(3) If two or more persons are responsible for the same offence, each of those persons shall be guilty of the offence, and the liability of each of them shall be independent of the liability of the others.

Aiding and abetting offences.

(4) Every person who in this State 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 that offence, and be punishable accordingly.

30. Any notice under this Act may be served personally or by post addressed to the last known place of residence or business of the person to be served.

Service of notices.
Ibid. s. 32.

31. No action, claim, or demand whatsoever shall lie, or be made or allowed by or in favour of any person whomsoever against His Majesty or the Minister or the Commissioner, or any officer or person acting in the execution of this Act, for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the passing of this Act, or of its operation, or of anything done or purporting to be done thereunder.

Protection of the Crown and its officers.
Ibid. s. 33.

32. The Governor may make all such regulations, not inconsistent with this Act, which may be necessary or convenient to be made for carrying this Act into effect or for facilitating the effectual operation of this Act, including the prescribing of forms which may be used under this Act and may by any such regulation impose a penalty not exceeding twenty pounds for a breach of any regulation.

Regulations.
Ibid. s. 35.

33. All moneys that may be required for carrying this Act into full execution shall be paid out of the Consolidated Revenue Fund, which is hereby appropriated for the purpose.

Appropriation.
Ibid. s. 36

34. The Commissioner shall prepare an annual report with respect to the administration of this Act for each year ending on the thirtieth day of June and a final report up to the expiry of the Act, and such reports shall be laid before both Houses of Parliament.

Annual report.

35. This Act shall continue in force during the continuance of the war in which His Majesty is at the commencement of this Act engaged and for a period of six months thereafter and no longer.

Duration of Act.