

No. , 1922.

A BILL

To repress harmful monopolies and restraints of trade; to repeal the Profiteering Prevention Act, 1920 ; to amend the Industrial Arbitration Act, 1912 ; and for purposes consequent thereon or incidental thereto.

[MR. BAVIN ;—6 *October*, 1922, A.M.]

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
5 the same, as follows :—

1. This Act may be cited as the "Monopolies Short title.
Act, 1922."

34043

31—A

2.

Division of
Act.

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

PART I.—PRELIMINARY—*ss.* 3-5.

PART II.—MONOPOLIES AND RESTRAINTS OF
TRADE—*ss.* 6-8.

PART III.—PENALTIES AND PROCEDURE—*ss.* 9- 5
16.

PART I.

PRELIMINARY.

Repeal of Act
1920, No. 41.

3. (1) The Profiteering Prevention Act, 1920, is hereby repealed. 10

(2) Upon the passing of this Act all orders, directions, and notices made, given, or continued under the authority of the said Act shall cease to have effect.

Repeal of *ss.* 70
and 71 of Act
1912, No. 17.

4. Sections seventy and seventy-one of the Industrial Arbitration Act, 1912, are hereby repealed. 15

Interpreta-
tion.

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

“Documents” includes books.

“Goods” includes wares and merchandise.

PART II.

20

MONOPOLIES AND RESTRAINTS OF TRADE.

Monopolising
or controlling
the demand
or supply of
goods.

cf. U.S.
Sherman Act,
1890, s. 2.

cf. Australian
Industries
Preservation
Act, 1906-
1910, s. 7.

6. (1) Any person is guilty of an offence who monopolises or attempts to monopolise, or combines or conspires with any other person to monopolise in New South Wales or any part thereof— 25

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

(b) the supply of any services.

(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 5 the section proves that such monopoly if effected would not be to the detriment of the public.

7. (1) Any person is guilty of an offence who, either as principal or agent, makes or enters into any contract or agreement, or is or continues to be a member of, or 10 engages in any combination or conspiracy in restraint of or with intent to restrain—

Contract or combination in restraint of trade or production. cf. 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 15 commerce; or

(b) the supply of any services.

(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 for an offence under this section and an answer to an allegation 20 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.

25 8. 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. cf. Australian Industries Preservation Act, 1906-1910, s. 9.

PART III.

30 PENALTIES AND PROCEDURE.

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

(2)

(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 not exceeding *five hundred* pounds, and the liability of each of them shall be independent of the liability of the other or others. 5

Penalty recoverable by suit in Supreme Court.

(3) Every such penalty shall be recoverable, together with costs of suit, by suit in the Supreme Court in its equitable jurisdiction upon information filed by the Attorney-General.

(4) Such suit shall be tried without a jury. 10

Injunction. cf. A. I. P. Act, s. 10 (2).

10. (1) Where a penalty is ordered to be paid by any person for an offence against this Act, the court shall, upon application by or on behalf of the Attorney-General, grant an injunction restraining such person and his servants or agents from the repetition or continuance 15 of the offence of which he has been convicted.

Disobedience to injunction. *Ibid.* s. 10A.

(2) 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. 20

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

Action for treble damages. cf. U.S. Sherman Act, 1890, s. 7. Australian Industries Preservation Act, 1906-1910, s. 11.

11. (1) Any person who is injured in his person or property by any other person, by reason of any act or 25 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 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 30 injury.

(2) No such action shall be instituted under this section without the written sanction of the Attorney-General.

Incriminating answer or discovery. cf. Australian Industries Preservation Act, 1906-1910, ss. 11 (2), 14B

12. No person shall, in any suit or action under 35 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 criminate or tend to criminate him, or may render or tend to render him liable to a 40 penalty; but his answer shall not be admissible in evidence

evidence against him in any civil or criminal proceeding other than a proceeding for an offence under this Act or a prosecution for perjury.

5 **13.** (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 *twelve* months, or both; and, in the case of a corporation,
10 by a penalty not exceeding *one thousand* pounds.

Second offence indictable. cf. *Ibid.* 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.

15 (3) The jury panel for the trial of any such indictable offence against this Act shall be taken from the list of special jurors.

Special jury. cf. *Ibid.* s. 12.

20 **14.** In any proceeding for an offence against this Act any indictment, information, declaration, 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. *Ibid.* s. 14A.

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

Minutes, &c., evidence. *Ibid.* s. 14C.

30 (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) any entry purporting to be a copy of or extract from any such 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,
35 or any of them—

(i) be admissible in evidence against those persons; and

40 (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.

16.

Documents,
&c., evidence.
Ibid. s. 14D.

16. In any proceeding for an offence against this Act, any letter, document, paper, or writing, or any thing purporting to be a copy of or extract from any 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 representative of that person—

(a) be admissible in evidence against that person ; 10
and

(b) be evidence of the matters and things thereby appearing, and that the letter, document, paper, or writing (or in the case of a copy that the original thereof) was written, signed, despatched 15
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 20
a copy or extract.

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[7d.]