

## AUSTRALIAN INDUSTRIES PRESERVATION.

### No. 9 of 1906.

An Act for the Preservation of Australian Industries, and for the Repression of Destructive Monopolies.

Assented to 24th September, 1906.]

**B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

#### PART I.—PRELIMINARY.

1. This Act may be cited as the *Australian Industries Preservation Act* 1906. Short title.

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

Division of Act.

PART I.—Preliminary.

PART II.—Repression of Monopolies.

PART III.—Prevention of Dumping.

3. In this Act, unless the contrary intention appears—

Interpretation.

“Commercial Trust” includes a combination, whether wholly or partly within or beyond Australia, 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.

## PART II.—REPRESSION OF MONOPOLIES.

Restraint of  
inter-State  
or external  
trade and  
destruction of  
industries.  
Cf. U.S.  
Sherman Act  
1890 s. 1.

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 with other countries or among the States—

(a) with intent to restrain trade or commerce to the detriment of the public; or

(b) with intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers,

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.

Restraint of  
trade and  
destruction of  
industries by  
corporations.

5.—(1.) Any foreign corporation, or trading or financial corporation formed within the Commonwealth, which, either as principal or agent, makes or enters into any contract, or engages or continues in any combination—

(a) with intent to restrain trade or commerce within the Commonwealth to the detriment of the public, or

(b) with intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers,

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.

Unfair  
competition.

6.—(1) For the purposes of the last two preceding sections, 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 inadequate remuneration for labour in the Australian industry :

(c) If the competition would probably or does in fact result in creating substantial disorganization in Australian industry or throwing workers out of employment :

(d) If the defendant, with respect to any goods or services which are the subject of the 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 Australian industry affected by the competition being reasonably efficient, effective, and up-to-date.

7.—(1.) Any person who monopolizes or attempts to monopolize, or combines or conspires with any other person to monopolize, any part of the trade or commerce with other countries or among the States, with intent to control, to the detriment of the public, the supply or price of any service, merchandise, or commodity, is guilty of an offence.

Monopoly of  
inter-State or  
external trade.  
Cf. U.S.  
Sherman Act  
s. 2.

Penalty: Five hundred pounds.

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

8.—(1.) Any foreign corporation, or trading or financial corporation formed within the Commonwealth, which monopolizes or attempts to monopolize, or combines or conspires with any person to monopolize, any part of the trade or commerce within the Commonwealth, with intent to control, to the detriment of the public, the supply or price of any service, merchandise, or commodity, is guilty of an offence.

Monopoly of  
trade by  
corporations.

Penalty: Five hundred pounds.

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

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

Aiding and  
abetting.

(a) the commission of any offence against this Part of this Act ;  
or

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

Penalty: Five hundred pounds.

10.—(1) The Attorney-General, or any person thereto authorized by him, may institute proceedings in the High 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—

Injunction.  
Cf. U.S.  
Sherman Act  
1890 s. 4.

(a) is in restraint of trade or commerce to the detriment of the public ; or

(b) is destructive or injurious, by means of unfair competition, to any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers.

Provided that except in the case of foreign corporations, or trading or financial corporations formed within the Commonwealth, this section shall only apply to contracts or combinations in relation to commerce with other countries or among the States.

(2.) 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 authorized 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.

treble damages.  
Cf. U.S.  
Sherman Act  
1890 s. 7.

11.—(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 High Court, before a Justice without a jury, sue for and recover treble damages for the injury.

incriminating  
answer or  
discovery.

(2.) No person shall, in any proceeding under this section, be excused from answering any question put either *vis à 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.

Special jury.

12. The jury panel for the trial of any offence against this Part of this Act, or for the trial of any action or issue under this Part of this Act, shall be taken from the list of special jurors (if any) in the State or part of the Commonwealth in which the trial takes place.

Trial of offences.

13.—(1.) Any offence against this Part of this Act (not being an indictable offence), shall be tried before a Justice of the High Court without a jury.

Second offence.

(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.

No proceeding  
without  
authority of  
Attorney-  
General.

14.—(1.) No criminal proceeding shall be instituted under this Part except by the Attorney-General or some person authorized by him.

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

Public  
notification of  
terms of  
contract or  
combination.

15.—(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—

(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 Australia 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 an Australian industry by unfair competition.

Notice by  
Attorney-  
General.

(3.) In any proceeding against the declarant in respect of any offence against section four or section five 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.

### PART III.—PREVENTION OF DUMPING.

#### 16. In this Part of this Act—

Interpretation.

“Justice” means a Justice of the High Court ;

“The Comptroller-General” means the Comptroller-General of Customs ;

“Imported goods” and “Australian goods” include goods of those classes respectively, and all parts or ingredients thereof ;

“Produced” includes manufactured, and “Producer” includes manufacturer ;

“Trade” includes production of every kind ;

“Industries” shall not include industries in which in the opinion of the Comptroller-General or Justice as the case may be, the majority of workers do not receive adequate remuneration or are subject to unfair terms or conditions of labour or employment.

17. Unfair competition has in all cases reference to competition with those Australian industries, the preservation of which, in the opinion of the Comptroller-General or a Justice as the case may be, is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers.

Industries to  
which unfair  
competition  
refers.

18.—(1.) For the purposes of this Part of this Act, competition shall be deemed to be unfair, unless the contrary is proved, if—

When  
competition  
deemed unfair.

(a) under ordinary circumstances of trade it would probably lead to the Australian goods being no longer produced or being withdrawn from the market or being sold at a loss unless produced at an inadequate remuneration for labour ; or

(b) the means adopted by the person importing or selling the imported goods are, in the opinion of the Comptroller-General or a Justice as the case may be, unfair in the circumstances ; or

C.12738.

- (c) the competition would probably or does in fact result in an inadequate remuneration for labour in the Australian industry ; or
- (d) the competition would probably or does in fact result in creating any substantial disorganization in Australian industry or throwing workers out of employment ; or
- (e) the imported goods have been purchased abroad by or for the importer, from the manufacturer or some person acting for or in combination with him or accounting to him, at prices greatly below their ordinary cost of production where produced or market price where purchased ; or
- (f) the imported goods are imported by or for the manufacturer, or some person acting for or in combination with him or accounting to him, and are being sold in Australia at a price which is less than gives the person importing or selling them a fair profit upon their fair foreign market value, or their fair selling value if sold in the country of production, together with all charges after shipment from the place whence the goods are exported directly to Australia (including Customs duty).

(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 Australian industry affected by the competition being reasonably efficient, effective, and up-to-date.

Certificate by  
Comptroller as  
to unfair  
competition.

19.—(1.) The Comptroller-General, whenever he has received a complaint in writing and has reason to believe that any person (hereinafter called the importer), either singly or in combination with any other person within or beyond the Commonwealth, is importing into Australia goods (hereinafter called imported goods) with intent to destroy or injure any Australian industry by their sale or disposal within the Commonwealth in unfair competition with any Australian goods, may certify to the Minister accordingly.

Matters  
required to be  
specified.

(2.) The certificate of the Comptroller-General shall specify—

- (a) the imported goods ;
- (b) the Australian industry and goods ;
- (c) the importer ;
- (d) the grounds of unfairness in the competition ;
- (e) the name, address, and occupation of any person (not being an officer of the public service) upon whose information he may have acted.

Additional  
statements.

(3.) The Comptroller-General may add to his certificate a statement of such other facts as in his opinion ought to be specified to give the importer fair notice of the matters complained of.

Opportunity  
to show cause.

(4.) The Comptroller-General shall, before making his certificate, give to the importer an opportunity to show cause why the certificate should not be made and furnish him with a copy of the complaint.

(5.) On receipt of the certificate the Minister may—

Reference by  
Minister to  
Justice.

- (a) by order in writing refer to a Justice the investigation and determination of the question whether the imported goods are being imported with the intent alleged; and if so, whether the importation of the goods should be prohibited either absolutely or subject to any specified conditions or restrictions or limitations;
- (b) notify in the *Gazette* that the question has been so referred; and
- (c) forward to the Justice a copy of the certificate.

20. From the date of the *Gazette* notice until the publication in the *Gazette* of the determination of the question by the Justice, goods the subject of the investigation shall not be imported unless the importer—

Importation  
pending  
publication.

- (a) gives to the Minister a bond with such sureties as the Minister approves, for such amount (not exceeding the true value of the goods for Customs purposes) as the Minister considers just and reasonable by way of precaution in the circumstances, and conditioned to be void if the Justice determines the question in favour of the importer; or
- (b) gives such other security and complies with such other conditions as the Minister approves;

and those goods shall, if imported in contravention of this section, be deemed to be prohibited imports within the meaning of the *Customs Act 1901*, and the provisions of that Act shall apply to the goods accordingly.

21.—(1.) The Justice shall proceed to expeditiously and carefully investigate and determine the matter, and for the purpose of the proceeding shall have power to inquire as to any goods, things, and matters whatsoever which he considers pertinent, necessary, or material.

Justice to  
investigate and  
determine.

(2.) For the purpose of the proceeding the Justice shall sit in open Court, and shall have all the powers of a Justice in the exercise of the ordinary jurisdiction of the High Court. He may, if he thinks fit, and shall on the application of either party, state a case for the opinion of the Full Court upon any question of law arising in the proceeding. And he may if he thinks fit, at any stage of the proceeding, refer the investigation and determination of the matter to the Full Court, which shall in that case have all the powers and functions of a Justice under this Part of this Act.

Power of  
Justice.

(3.) The certificate of the Comptroller-General shall be *prima facie* evidence of facts by sub-section (2) of section nineteen of this Act required to be specified therein.

Certificate  
*prima facie*  
evidence.

(4.) In addition to the Comptroller-General and the importer the Justice may, if he thinks fit, allow any person interested in importing imported goods to be represented at the investigation.

(5.) The Justice shall be guided by good conscience and the substantial merits of the case, without regard to legal forms or technicalities, or whether the evidence before him is in accordance with the law of evidence or not.

Justice to  
decide  
according to  
conscience  
and merits.

(6.) No person shall in any proceeding before a Justice be excused from answering any question or producing documents on the ground that the answer or production 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.

(7.) The Justice shall forward his determination to the Minister.

(8.) In the case of the following agricultural implements:—Ploughs of all kinds over  $1\frac{1}{2}$  cwt., tine harrows, disc harrows, grain drills, combined grain seed and manure drills, land rollers, cultivators, chaff cutters, seed cleaners, stripper harvesters, and any other implement usually used in agriculture, the Justice shall inquire into and determine the question whether the goods are being imported with the effect of benefiting the primary producers without unfairly injuring any other section of the community of the Commonwealth.

Determination  
final and  
conclusive.

(9.) The determination of the Justice shall be final and conclusive and without appeal, and shall not be questioned in any way.

Action upon  
determination.

22.—(1.) Upon the receipt of the determination of the Justice, the Minister shall forthwith cause it to be published in the *Gazette*.

(2.) If the Justice determines that the imported goods are being imported with the intent alleged, and that their importation should be prohibited either absolutely or subject to any specified conditions or restrictions or limitations of any kind whatsoever—

(a) the determination when so published shall have the effect of a proclamation under the *Customs Act* 1901 prohibiting the importation of the goods either absolutely or subject to those conditions or restrictions or limitations as the case may be; and in that case the provisions of that Act shall apply to goods so prohibited; and

Reduction of  
amount of bond.

(b) the Justice may by order reduce the amount recoverable under any bond given in pursuance of this Part of this Act to such sum as the importer satisfies him is reasonable and just in the circumstances.

Power to  
rescind  
prohibition.

23. The Governor-General may at any time, by proclamation, simultaneously with or subsequently to any prohibition under this Part of this Act, rescind in whole or in part, the prohibition or any condition or restriction or limitation on importation imposed thereby.

Determination  
to be laid before  
Parliament.

24. In all cases of prohibition the determination of the Justice and any proclamation affecting the same shall be laid before both Houses of the Parliament within seven days after the publication in the *Gazette*, or, if the Parliament is not then sitting, within seven days after the next meeting of Parliament.

Rules of Court.

25. The Justices of the High Court, or a majority of them, may make Rules of Court, not inconsistent with this Act, for regulating the proceedings before a Justice under this Part of this Act, and for carrying this Part of this Act into effect.



**26.**—(1.) Any person who wilfully—

- (a) makes to the Comptroller-General or to any officer of Customs any false statement in relation to any action or proceedings taken or proposed to be taken under this Part of this Act ; or
- (b) misleads the Comptroller-General in any particular likely to affect the discharge of his duty under this Act ;

Wilfully making  
false statement  
or misleading  
Comptroller-  
General.

shall be guilty of an offence.

Penalty: One hundred pounds or Twelve months' imprisonment.

(2.) Any person convicted under the last preceding sub-section may be ordered by the Justice to whom a question is referred under this Part of this Act to pay the whole or part of the costs incurred by the importer in whose favour the question is determined.