

BLACK MARKETING.

No. 49 of 1942.

An Act to provide for the Prevention of Black Marketing.

[Assented to 6th October, 1942.]

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

1. This Act may be cited as the *Black Marketing Act 1942*. Citation.
2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.
3. For the purposes of this Act, "black marketing" means— Definition
of black
marketing.
 - (a) selling or offering for sale, or purchasing or offering to purchase, or paying for or offering to pay for, any goods at a greater price than the maximum price fixed, by or under the Regulations, for the sale of those goods;
 - (b) supplying or offering to supply, or accepting or offering to accept, or paying for or offering to pay for, the supply of, any service, declared, by or under the Regulations, to be a declared service for the purpose of the Regulations, at a higher rate than the maximum rate fixed in relation thereto by or under the Regulations;
 - (c) otherwise than in accordance with the Regulations, selling or disposing of, or supplying, or offering to sell, dispose of or supply, or acquiring or offering to acquire, goods declared to be rationed goods or otherwise rationed by or under the Regulations, or supplying or carrying on or offering to supply or carry on or accepting or offering to accept, any service so declared to be a rationed service or otherwise so rationed;
 - (d) in contravention of the Regulations, supplying, distributing, selling, disposing of or parting with the possession or custody of, or offering to supply, distribute, sell, dispose of or part with the possession or custody of, or acquiring or taking into possession or offering to acquire or take into possession, goods or any thing whatsoever the supply, distribution, sale, disposal, parting with the possession or custody, acquiring or taking into possession of which is prohibited or subject to restrictions or conditions (including conditions as to price) by or under the Regulations;
 - (e) taking, causing, permitting or suffering delivery of goods upon any premises delivery upon which is prohibited by or under the Regulations;

- (f) otherwise than in accordance with the Regulations, producing, manufacturing or treating any goods or thing the production, manufacture or treating of which is subject to restrictions or conditions by or under the Regulations ;
- (g) otherwise than in accordance with the Regulations, moving, or purporting to sell or supply or to offer for sale or to supply, or purporting to acquire or take into possession or to offer to acquire or take into possession, any goods or any thing whatsoever vested in the Commonwealth by or under the Regulations ;
- (h) otherwise than in accordance with the Regulations, using or dealing with any licence, ration ticket, ration document or ration coupon issued under the Regulations ; or
- (i) in contravention of the Regulations, making or uttering any counterfeit or forged licence, ration ticket, ration document or ration coupon or doing any other act or thing in relation to any licence, ration ticket, ration document or ration coupon issued under the Regulations, or in relation to any counterfeit or forged licence, ration ticket, ration document or ration coupon,

and includes any other act or thing done, or omitted to be done, or any conduct, in contravention of the Regulations, which is declared, by regulations made under this Act, to be black marketing ; and “ the Regulations ” means any regulations made (whether before or after the commencement of this Act) under the *National Security Act 1939* or under that Act as subsequently amended, and includes any orders made under any such regulations.

Offence of
black
marketing.

4.—(1.) Any person who does any act or thing, or is guilty of any omission or conduct, which constitutes black marketing within the meaning of the last preceding section shall be guilty of the offence of black marketing.

(2.) The offence of black marketing may be prosecuted summarily or upon indictment, but an offender shall not be punished more than once in respect of the same offence.

(3.) The punishment for the offence of black marketing shall be—

(a) if the offence is prosecuted summarily—imprisonment for not less than three months and not more than twelve months or, if the offender is a body corporate, a fine of not less than One thousand pounds and not more than Five thousand pounds ; and

(b) if the offence is prosecuted upon indictment—imprisonment for any term not less than twelve months or, if the offender is a body corporate, a fine of any amount not less than Ten thousand pounds.

(4.) The offence of black marketing shall not be prosecuted without the written consent of the Attorney-General after report from the Minister administering the Regulations in relation to which the offence was committed and advice from a Committee appointed by the

Attorney-General and consisting of a representative of the Department administered by that Minister, a representative of the Attorney-General's Department and a representative of the branch of the Department of Trade and Customs known as the Prices Branch

(5.) For the purpose of the trial of a person for the offence of black marketing, the offence shall be deemed to have been committed either at the place where it was actually committed or (subject to the Constitution) at any place where the person may be.

(6.) In addition to any other punishment, the court before which a person is convicted of the offence of black marketing—

(a) shall order the forfeiture to the Crown of the goods or things (if any) in respect of which the offence of black marketing was committed or an equivalent quantity of the same or like goods or things the property of the convicted person, or of a sum of money representing their value at the time of the order of forfeiture ; and

(b) may impose a fine in pursuance of sub-section (10.) of this section.

(7.) Upon the making of an order under the last preceding sub-section, the convicted person shall, on demand by any member of the Police Force of the Commonwealth or of a State or Territory of the Commonwealth or by any person authorized by the Minister to act under this section, deliver up any such goods or things or pay to the member or to the person so authorized a sum of money representing the value of the goods or things at the time of the demand, and, if he refuses or fails to do so, a court (including a court of summary jurisdiction) may order him to be imprisoned for any term not exceeding twelve months or, if the convicted person is a corporation, may order it to pay an additional sum of money not exceeding Five hundred pounds.

(8.) Any such member or person so authorized may seize any such goods or things and for that purpose shall at all times have full and free access to all buildings, vessels, vehicles and places.

(9.) If, from evidence given in pursuance of section eleven of this Act, it appears to the court that it is likely that the convicted person has, since the twentieth day of February, One thousand nine hundred and forty-two, as a result of trading operations or activities of which such evidence is given, made excessive profits, it shall refer to the prescribed authority the question whether excessive profits have been so made, and, if so, the amount of those excessive profits.

(10.) Where the prescribed authority, after inquiry and investigation (which the prescribed authority is hereby authorized to make), makes, to the court, a report stating that the convicted person has so made excessive profits and specifying the amount of the excessive profits so made, the court may impose on the convicted person a fine not exceeding an amount equal to twice the amount of the excessive profits so specified.

(11.) For the purpose of any inquiry and investigation under the last preceding sub-section—

- (a) the prescribed authority shall have such powers of summoning witnesses, requiring the production of books, documents and papers, administering oaths and affirmations, and access to buildings and places, as are prescribed ;
- (b) the prescribed authority shall have such protection and immunity as are prescribed ;
- (c) persons summoned to give evidence before the prescribed authority, and witnesses before the prescribed authority, shall have such protection, immunity and liabilities as are prescribed.

(12.) For the purpose of this section, " the prescribed authority " means a person who holds or has held the office of Justice of the Supreme Court of a State or Territory of the Commonwealth or Judge of a District or County Court or Local Court of Full Jurisdiction of a State.

Offences by
bodies
corporate.

5. Where a person guilty of the offence of black marketing is a body corporate, every person who, at the time of the commission of the offence, was a director, officer or servant actively concerned in the conduct of the business of the body corporate shall be deemed guilty of the offence, unless he proves that the offence was committed without his knowledge and that he used all due diligence to prevent the commission of the offence or of offences of the same character.

Each of two
or more
persons
responsible
for same
offence to
be liable.

6. If two or more persons are responsible for the offence of black marketing, each of those persons shall be liable to the penalty prescribed for the offence, and the liability of each of them shall be independent of the liability of the other or others.

Offence by
agent,
employee, &c.

7. Any agent, employee or other person acting or purporting to act for another who knowingly takes part in or is in any way privy to doing, without the authority of his principal or employer, any act or thing which, if so authorized, would constitute the offence of black marketing on the part of the principal or employer, shall be deemed to have committed that offence and shall be punishable accordingly.

Prosecution
where act
an offence
under
different laws.

8.—(1.) Where any act or thing done or omitted to be done by, or any conduct of, any person is the offence of black marketing, and is also an offence against some other Act or law, the offender may be prosecuted and convicted under either this Act or the other Act or law.

(2.) Nothing in this section shall render any person liable to be punished twice in respect of the same offence.

Evidence.

9. In any prosecution for the offence of black marketing the provisions of the Regulations as to evidence or proof of any matter or fact which would be applicable in a prosecution, in respect of the same act, conduct or omission for which the prosecution for black marketing was instituted for an offence against the *National Security Act 1939-1940* shall be applicable in like manner as if the prosecution for black marketing were a prosecution under that Act.

10.—(1.) Where any person is convicted of the offence of black marketing, the court before which he is convicted may, in addition to any punishment provided for the offence, require him to enter into recognizances, with or without sureties, to observe the provisions of the Regulations in relation to which the offence was committed.

Power to order recognizances.

(2.) If any person fails to comply with an order of the court requiring him to enter into recognizances, the court may order him to be imprisoned for any term not exceeding twelve months to commence at the expiration of any term of imprisonment to which he was sentenced on his conviction.

11. Upon the conviction of any person for the offence of black marketing, and prior to the imposition of any penalty, evidence may be given of any trading operations or activities of that person since the third day of September, One thousand nine hundred and thirty-nine.

Evidence as to course of trading in prosecutions under this Act.

12.—(1.) Upon the conviction of any person for the offence of black marketing, the court shall require that person to exhibit, in or outside, or both in and outside, his place of business (if any), notices of such number, size and lettering, in such positions and containing such particulars relating to the conviction as the court determines, and to keep them so exhibited continuously for a period of not less than three months from the date of the conviction; and the person shall comply fully with that requirement; and, if he fails to do so, shall again be guilty of the offence of black marketing.

Notice of conviction to be displayed in or outside shops.

(2.) If any such person refuses or fails to comply fully with any such requirement, the sheriff, marshal, or other proper officer of the court by which he was so convicted, or any member of the Police Force of the Commonwealth or of a State or Territory of the Commonwealth, not below the rank of Senior Constable, may, without prejudice to any proceedings arising out of any such refusal or failure, affix the notices in or outside, or both in and outside, the place of business in accordance with the requirement of the court in pursuance of the last preceding sub-section.

(3.) Any person who obstructs any such member of a Police Force in the exercise of any power conferred by this section shall be guilty of the offence of black marketing.

(4.) The notices shall be headed with the words "Black Marketing Act 1942" in bold letters and shall be prepared in such a manner as to be easily legible to persons contemplating making any purchases or conducting any business at the place of business where they are affixed.

(5.) If the court is satisfied that the exhibition of notices in accordance with any requirement of the court under the foregoing provisions of this section would not be effective to bring the fact of the conviction to the notice of persons dealing with the convicted person, the court may, in lieu of or in addition to making any such requirement, require the convicted person to print or cause to be printed on the

invoices, accounts and letterheads to be used by him in connexion with his business during a period of not less than three months from the date of the conviction, a notice headed "Black Marketing Act 1942" in bold type, and of such size and lettering, in such position, and containing such particulars relating to the conviction as the court determines; and the convicted person shall comply fully with that requirement, and, if he fails to do so, shall again be guilty of the offence of black marketing.

Particulars
of conviction
may be
broadcast.

13.—(1.) If the Attorney-General is satisfied that it is necessary so to do, in order to give adequate publicity to the offence of black marketing committed by any person, he may report the fact to the Postmaster-General who thereupon shall—

(a) direct the Australian Broadcasting Commission constituted under the *Australian Broadcasting Act 1942* to broadcast from such of the National broadcasting stations, and in such manner and at such time or times, as he directs such particulars relating to the conviction of any person for the offence of black marketing as he directs in writing; and

(b) direct the licensee of any commercial broadcasting station situated within one hundred miles of the place of conviction of any such person to broadcast from that station, at the cost of that person, and in such manner, and at such time or times, as the Postmaster-General directs, the like particulars relating to any such conviction.

(2.) The licensee of a commercial broadcasting station may, in default of payment by the convicted person for any such broadcasting of particulars, recover from that person in any court of competent jurisdiction the amount due in respect of the broadcasting.

(3.) The licensee of a commercial broadcasting station shall not refuse or fail to broadcast particulars in accordance with a direction by the Postmaster-General under this section.

Penalty: One hundred pounds or imprisonment for six months or both; or, if the offender is a corporation, Five hundred pounds.

Particulars
of conviction to
be published
in the
Gazette, &c.

14.—(1.) Particulars relating to the conviction of any person for an offence against this Act shall be published in the *Gazette*.

(2.) If the Attorney-General is satisfied that it is necessary so to do, in order to give adequate publicity to the offence of black marketing committed by any person, he may direct the publisher of any newspaper published within a distance of one hundred miles of the place of conviction of any person for the offence of black marketing to publish in the newspaper as full and adequate an account of the trial and conviction of any such person as is reasonable in all the circumstances; and the publisher shall comply fully with that direction.

Penalty: One hundred pounds or imprisonment for six months or both; or, if the offender is a corporation, Five hundred pounds.

15. If, in any proceedings against a person for the offence of black marketing, it appears to the court that any witness for the prosecution is implicated in the offence charged, but has made a full and truthful disclosure of all the circumstances within his knowledge relating to the offence, the court may issue to the witness a certificate to that effect, and any certificate so issued shall be a bar to any proceedings against that witness in respect of that offence.

Exemption
from
prosecution
of witness
who has
made full
disclosure.

16. Any fine or penalty or any sum of money adjudged to be paid by, or payable by reason of, any conviction or order of a court under this Act may, without prejudice to any other action which may be taken in relation to the fine, penalty or sum, be levied by distress.

Distress.

17. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act, and, in particular, for—

Regulations.

- (a) declaring any act or thing done or omitted to be done, or any conduct, in contravention of the Regulations to be black marketing ;
- (b) making provision with respect to the proof of any matters in any prosecution for the offence of black marketing ; and
- (c) prescribing penalties not exceeding a fine of One hundred pounds or imprisonment for six months for offences against the regulations made under this Act.

18. This Act shall continue in operation until a date to be fixed by Proclamation, and no longer, but in any event not longer than six months after His Majesty ceases to be engaged in war.

Duration of
Act.