

Restrictive Trade Practices

No. 138 of 1971

An Act to preserve Competition in Trade and Commerce to the extent required by the Public Interest.

[Assented to 20 December 1971]

BE it enacted by the Queen'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 *Restrictive Trade Practices Act 1971*. Short title.
2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.
3. This Act is divided into Parts, as follows:— Parts.
 - Part I.—Preliminary (Sections 1–6).
 - Part II.—Constitution of the Trade Practices Tribunal (Sections 7–21).
 - Part III.—The Commissioner, the Registrar of the Tribunal and other Officers (Sections 22–34).
 - Part IV.—Examinable Agreements and Practices (Sections 35–39).
 - Part V.—Registration of certain Agreements (Sections 40–45).
 - Part VI.—Examination of Agreements and Practices by the Tribunal.
 - Division 1.—General (Sections 46–58).
 - Division 2.—Negative Clearances (Sections 59–60).
 - Division 3.—Review of Determinations and Judicial Determination of Questions of Law (Sections 61–65).
 - Part VII.—Resale Price Maintenance.
 - Division 1.—The Unlawful Practice of Resale Price Maintenance (Sections 66–71).
 - Division 2.—Exemptions (Sections 72–75).
 - Division 3.—General (Sections 76–77).
 - Part VIII.—Enforcement of Orders of the Tribunal (Sections 78–80).
 - Part IX.—Provisions relating to the Tribunal.
 - Division 1.—Procedure and Evidence (Sections 81–87).
 - Division 2.—General (Sections 88–92).
 - Division 3.—Offences in relation to the Tribunal (Sections 93–95).

Part X.—Collusive Tendering and Collusive Bidding (Sections 96–98).

Part XI.—Civil Remedies (Sections 99–103).

Part XII.—Overseas Cargo Shipping.

Division 1.—Preliminary (Sections 104–108).

Division 2.—Filing of Conference Agreements (Sections 109–115).

Division 3.—Powers in relation to Conference Agreements (Sections 116–121).

Division 4.—Powers in relation to Individual Shipowners (Sections 122–125).

Division 5.—General (Sections 126–134).

Division 6.—Civil Remedies in relation to Overseas Cargo Shipping (Sections 135–137).

Part XIII.—Interpretative Provisions (Sections 138–143).

Part XIV.—Transitional Provisions (Sections 144–159).

Part XV.—Miscellaneous (Sections 160–170).

Repeal.

4.—(1.) The following Acts are repealed:—

Trade Practices Act 1965;

Trade Practices Act 1966;

Trade Practices Act 1967;

Trade Practices Act 1971.

(2.) Nothing in the last preceding sub-section revives the operation of an Act, or of a section of an Act, referred to in sub-section (2A.), (3.) or (4.), of section 4 of the *Trade Practices Act 1965–1971* or affects the provision made by sub-sections (6.) and (7.) of that section for the citation of the *Seat of Government (Administration) Act 1910–1965* or of the *Northern Territory (Administration) Act 1910–1967*.

Definitions.

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

“business” includes a profession;

“consumer” includes a person to whom services are supplied;

“corporation” means a corporation that is a foreign corporation, a trading corporation formed within the limits of the Commonwealth or a financial corporation so formed;

“deal with” means supply goods or services to, or acquire goods or services from, and other references to dealing or dealings have corresponding meanings;

“Deputy President” means a Deputy President of the Tribunal, and includes a person appointed to act as a Deputy President of the Tribunal;

- “Deputy Registrar” means a Deputy Registrar of the Tribunal, and includes a person appointed to act as a Deputy Registrar of the Tribunal;
- “document” includes a book or writing;
- “goods” includes—
- (a) ships, aircraft and other vehicles;
 - (b) animals, including fish;
 - (c) minerals, trees and crops, whether on, under or attached to land or not; and
 - (d) gas and electricity;
- “member” means a member of the Tribunal, and includes the President and a person appointed to act as a member;
- “order” includes a refusal to make an order;
- “person” includes a body corporate, whether a corporation or not, as well as a natural person;
- “practice” includes a single act or transaction;
- “presidential member” means the President or a Deputy President;
- “price” includes a charge of any description;
- “relevant restriction”, in relation to an examinable agreement—
- (a) means the restriction under the agreement by reason of which the agreement is an examinable agreement; or
 - (b) if there are several restrictions under the agreement by reason of any of which the agreement is an examinable agreement, means either or any of those restrictions,
- but does not include so much of the operation of a restriction as is required by this Act to be disregarded in determining whether the agreement is an examinable agreement;
- “restriction” includes any negative obligation, whether absolute or not and whether express or implied;
- “services” includes, without limiting the generality of that expression, the rights or benefits that are to be provided under an agreement for—
- (a) the performance of work (otherwise than under a contract of service), whether with or without the supply of goods;
 - (b) the provision of, or of the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or
 - (c) the conferring of rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;

“ supply ” includes—

(a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to services—provide, grant or confer, and “ supplied ” and “ supplier ” have corresponding meanings;

“ Territory ” means the Australian Capital Territory, the Territory accepted by the *Jervis Bay Territory Acceptance Act 1915* or the Northern Territory of Australia;

“ the Commissioner ” means the Commissioner of Trade Practices, and includes a person appointed to act as the Commissioner of Trade Practices;

“ the Court ” means the Commonwealth Industrial Court;

“ the practice of resale price maintenance ” means the practice of resale price maintenance referred to in Part VII;

“ the President ” means the President of the Tribunal, and includes a person appointed to act as President of the Tribunal;

“ the Register ” means the Register of Trade Agreements kept under this Act, and includes a part of that Register;

“ the Registrar ” means the Registrar of the Tribunal, and includes a person appointed to act as the Registrar of the Tribunal;

“ the Tribunal ” means the Trade Practices Tribunal established by this Act, and includes a member or Division of that Tribunal performing functions of that Tribunal.

Crown not bound.

6. This Act does not bind the Crown in right of the Commonwealth or of a State.

PART II.—CONSTITUTION OF THE TRADE PRACTICES TRIBUNAL.

Constitution of Tribunal.

7.—(1.) There is hereby established a Trade Practices Tribunal, which shall consist of a President and such number of Deputy Presidents and other members as are appointed in accordance with this section.

(2.) A member of the Tribunal shall be appointed by the Governor-General.

Qualifications of members.

8.—(1.) A person shall not be appointed as a presidential member unless he is—

(a) a Judge of a Federal Court, not being the High Court or a court of a Territory of the Commonwealth not forming part of the Commonwealth; or

(b) a person who has the status of a Judge of the Court.

(2.) A person shall not be appointed as a member other than a presidential member unless he appears to the Governor-General to be qualified for appointment by virtue of his knowledge of, or experience in, industry, commerce or public administration.

9.—(1.) Subject to this Part, a member holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment, but is eligible for re-appointment. Terms and conditions of appointment.

(2.) Subject to this Part, the Governor-General may, in the instrument of appointment of a member, specify terms and conditions of appointment, which may include term and conditions making provision, to the exclusion of any other provision that would be applicable, with respect to leave of absence and pensions or retiring allowances.

10.—(1.) The President shall, if he is not the Chief Judge of the Commonwealth Industrial Court or the President of the Commonwealth Conciliation and Arbitration Commission, be paid additional remuneration at the rate of Two thousand dollars per annum and an additional annual allowance at the rate of Five hundred dollars per annum. Remuneration and allowances.

(2.) A member other than a presidential member shall be paid remuneration at the rate of Two thousand six hundred dollars per annum and, in addition, Thirty-five dollars in respect of each day on which he sits as a member of a Division of the Tribunal for the purpose of hearing and determining proceedings.

(3.) No remuneration or allowance referred to in either of the last two preceding sub-sections shall be diminished during a term of office.

11. A member shall be paid such allowances in respect of travelling expenses as are prescribed. Travelling allowances.

12.—(1.) Where the President is, or is expected to be, absent from duty, or there is a vacancy in the office of President, the Attorney-General may appoint a Deputy President or an acting Deputy President to act as President during the absence or until the filling of the vacancy. Acting appointments.

(2.) Where a presidential member (including the President) is, or is expected to be, absent from duty, the Governor-General may appoint a person qualified to be appointed as a presidential member to act as a Deputy President during the absence from duty of the member.

(3.) Where a member other than a presidential member is, or is expected to be, absent from duty, the Governor-General may appoint a person qualified to be appointed as a member other than a presidential member to act as such a member during the absence from duty of the member.

(4.) Where a person has been appointed under sub-section (2.) or (3.) of this section, the Governor-General may, by reason of pending proceedings or other special circumstances, direct, before the absent member resumes duty, that the person so appointed shall continue to act under the appointment after the resumption of duty by the absent member until the Governor-General terminates the appointment, but a person shall not continue to act as a member by virtue of this sub-section for more than one year after the resumption of duty by the absent member.

(5.) Where a person has been appointed under this section to act as a member during the absence from duty of a member, and that member ceases to hold office without having resumed duty, the period of appointment of the person so appointed shall be deemed to continue until it is terminated by the Governor-General, or until the expiration of twelve months from the date on which the absent member ceases to hold office, whichever first happens.

Suspension
and removal
of members.

13.—(1.) The Governor-General may suspend a member from office on the ground of misbehaviour or physical or mental incapacity.

(2.) The Attorney-General shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within seven sitting days of the House after the suspension.

(3.) Where such a statement has been laid before a House of the Parliament, that House may, within fifteen sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member should be restored to office and, if each House so passes such a resolution, the Governor-General shall terminate the suspension.

(4.) If, at the expiration of fifteen sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may remove the member from office.

(5.) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Governor-General shall remove him from office.

(6.) A member shall not be removed from office except as provided by this section.

(7.) A presidential member ceases to hold office if he no longer holds office as a person referred to in paragraph (a) or paragraph (b) of sub-section (1.) of section 8 of this Act.

Resignation.

14. A member may resign his office by writing signed by him and delivered to the Governor-General.

15.—(1.) A member shall, before proceeding to discharge the duties of his office, take an oath or make an affirmation in accordance with the form of oath or affirmation in the First Schedule to this Act.

Oath or affirmation of office.

(2.) The oath or affirmation shall be taken or made before a Judge of a Federal Court or of the Supreme Court of a State.

16.—(1.) Except as otherwise provided by this Act, the Tribunal shall, for the purpose of hearing and determining proceedings, be constituted by a Division of the Tribunal consisting of a presidential member and two members who are not presidential members.

Constitution of Tribunal for particular matters.

(2.) Where, before the commencement of the hearing of proceedings to which the last preceding sub-section would be applicable, there is filed with the Registrar, in accordance with such requirements as to time or otherwise as are prescribed, a notice signed by or on behalf of all the parties, other than the Commissioner, that they have agreed that the proceedings shall be dealt with by the Tribunal constituted by a single presidential member, the Tribunal shall be constituted for the purpose of those proceedings by a single presidential member.

(3.) The Tribunal as constituted in accordance with the last preceding sub-section may continue to deal with proceedings notwithstanding that a further party is added to the proceedings after the commencement of the hearing.

(4.) The validity of a determination or order of the Tribunal purporting to be constituted by one or more members in accordance with this Act shall not be affected or called in question by reason of any defect or irregularity in the constitution of the Tribunal by that member or those members.

17. The President may give directions as to the arrangement of the business of the Tribunal and the constitution of Divisions of the Tribunal.

Arrangement of business.

18. When a member, other than a presidential member, is informed by the President that the President proposes that the member shall be a member of a Division of the Tribunal in any proceedings, the member shall, to the best of his knowledge, disclose to the President any direct or indirect pecuniary interest that the member has in any business carried on in Australia, or in any body corporate carrying on any such business, being an interest that could be in conflict with his duties as a member of the Tribunal in those proceedings.

Disclosure of financial interests of members.

19.—(1.) The President shall preside at proceedings of a Division of the Tribunal at which he is present.

Presidential member to preside.

(2.) At proceedings before a Division of the Tribunal at which the President is not present, the Deputy President present or, in the case of a Review Division, a Deputy President nominated by the President, shall preside.

Decision of questions.

20.—(1.) Subject to Division 3 of Part VI. (including that Division in its application by virtue of section 77 of this Act), a question of law arising in a matter before a Division of the Tribunal other than a Review Division (including the question whether a particular question is one of law) shall be determined in accordance with the opinion of the presidential member presiding.

(2.) Subject to the last preceding sub-section, a question arising in proceedings before a Division of the Tribunal shall be determined in accordance with the opinion of a majority of the members constituting the Division.

Member ceasing to be available.

21.—(1.) This section applies where the hearing of any proceedings has been commenced or completed by the Tribunal but, before the matter to which the proceedings relate has been determined, the member, or one of the members, constituting the Tribunal for the purposes of the proceedings has ceased to be a member of the Tribunal or has ceased to be available for the purposes of the proceedings.

(2.) Where the President is satisfied that this section applies in relation to proceedings, the President may direct that a specified member of the Tribunal shall take the place of the member referred to in the last preceding sub-section for the purposes of the proceedings.

(3.) Where this section applies in relation to proceedings that were being dealt with before the Tribunal constituted by three members, the President may, instead of giving a direction under the last preceding sub-section, direct that the hearing and determination, or the determination, of the proceedings be completed by the Tribunal constituted by the members other than the member referred to in sub-section (1.) of this section.

(4.) Where the President has given a direction under the last preceding sub-section, he may, at any time before the determination of the proceedings, direct that a third member be added to the Tribunal as constituted in accordance with the last preceding sub-section.

(5.) The Tribunal as constituted in accordance with any of the provisions of this section for the purposes of any proceedings may have regard to any record of the proceedings before the Tribunal as previously constituted.

PART III.—THE COMMISSIONER, THE REGISTRAR OF THE TRIBUNAL AND OTHER OFFICERS.

Office of Commissioner.

22. There shall be a Commissioner of Trade Practices, who shall be appointed by the Governor-General.

Terms and conditions of appointment.

23.—(1.) Subject to this Part, the Commissioner holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(2.) Subject to this Part, the Governor-General may, in the instrument of appointment of a person as the Commissioner, specify terms and conditions of appointment, which may include terms and conditions making provision, to the exclusion of any other provision that would be applicable, with respect to leave of absence and pensions or retiring allowances.

24.—(1.) The Commissioner shall be paid salary at the rate of Nineteen thousand five hundred dollars per annum and an annual allowance at the rate of One thousand dollars per annum. Remuneration and allowances.

(2.) Neither the salary nor the allowance referred to in the last preceding sub-section shall be diminished during a term of office.

(3.) The Commissioner shall be paid such allowances in respect of travelling expenses as are prescribed.

25.—(1.) The Commissioner shall not engage in paid employment outside the duties of his office. Outside employment and interests.

(2.) A person who is a director of a company shall not be appointed as the Commissioner and the Commissioner shall not act as director of a company.

(3.) The Commissioner shall give written notice to the Attorney-General of all direct and indirect pecuniary interests that he has or acquires in any business carried on in Australia or in any body corporate carrying on any such business.

26. If a person appointed to the office of Commissioner was, immediately before his appointment, an officer of the Public Service of the Commonwealth— Rights of public servant appointed as Commissioner.

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as the Commissioner shall be taken into account as if it were service in the Public Service of the Commonwealth; and
- (c) the *Officers' Rights Declaration Act 1928–1969* applies as if this Act and this section had been specified in the Schedule to that Act.

27.—(1.) Where the Commissioner is, or is expected to be, absent from duty, or there is a vacancy in the office of Commissioner, the Governor-General may appoint a person to act as the Commissioner during the absence or until the filling of the vacancy, but a person so appointed by reason of a vacancy in the office of Commissioner shall not act as the Commissioner for more than twelve months. Acting Commissioner.

(2.) Where a person has been appointed to act as the Commissioner during the absence from duty of the Commissioner and the Commissioner ceases to hold office without having resumed duty, the period of appointment of the person so appointed shall be deemed to continue until it is

terminated by the Governor-General, or until the expiration of twelve months from the date on which the Commissioner ceases to hold office, whichever first happens.

Suspension
and removal of
Commissioner.

28.—(1.) The Governor-General may suspend the Commissioner from office for misbehaviour or physical or mental incapacity.

(2.) The Attorney-General shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within seven sitting days of the House after the suspension.

(3.) Where such a statement has been laid before a House of the Parliament, that House may, within fifteen sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Commissioner ought to be restored to office and, if each House so passes such a resolution, the Governor-General shall terminate the suspension.

(4.) If, at the expiration of fifteen sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may remove the Commissioner from office.

(5.) If the Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Governor-General shall remove him from office.

(6.) The Commissioner shall not be removed from office except as provided by this section.

Resignation.

29. The Commissioner may resign his office by writing signed by him and delivered to the Governor-General.

Oath or
affirmation of
office.

30.—(1.) The Commissioner shall, before proceeding to discharge the duties of his office, take an oath or make an affirmation in accordance with the form of oath or affirmation in the First Schedule to this Act.

(2.) The oath or affirmation shall be taken or made before a justice of the peace or a commissioner for taking affidavits.

Staff.

31. The staff necessary to assist the Commissioner shall be persons employed under, or whose services are made available in accordance with arrangements made under, the *Public Service Act 1922–1968*.

Delegation by
Commissioner.

32.—(1.) The Commissioner may, by writing under his hand, delegate to a person doing duty under the last preceding section, either generally or as provided by the instrument of delegation, any of his powers and functions under this Act, except—

(a) this power of delegation; or

(b) his powers and functions under sub-sections (1.) and (2.) of section 47 of this Act.

(2.) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3.) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Commissioner.

33.—(1.) There shall be a Registrar of the Tribunal and such Deputy Registrars of the Tribunal as are appointed in accordance with this section. Staff of Tribunal.

(2.) The Registrar and the Deputy Registrars shall be appointed by the Attorney-General and shall have such duties and functions as are provided by this Act and the regulations and such other duties and functions as the President directs.

(3.) The Registrar and the Deputy Registrars, and the staff necessary to assist them, shall be persons employed under, or whose services are made available in accordance with arrangements made under, the *Public Service Act 1922-1968*.

34.—(1.) This section applies to every person who is or has been the Commissioner or a member of the staff assisting the Commissioner. Secretary.

(2.) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connexion with this Act—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Act; or
- (b) produce to any person the Register or a document furnished for the purposes of this Act.

Penalty: One thousand dollars or imprisonment for three months.

(3.) A person to whom this section applies shall not be required to produce in a court the Register or any document relating to the affairs of any other person of which he has the custody, or to which he has access, by virtue of his office or employment under or for the purposes of this Act, or to divulge or communicate to any court any information concerning the affairs of any other person obtained by him by reason of any such office or employment, except when it is necessary to do so for the purposes of, or of a prosecution under or arising out of, this Act.

(4.) Nothing in this section applies in relation to—

- (a) the communication of information to, or the production of the Register or a document to, the Attorney-General or to an officer acting on behalf of, and with the authority of, the Attorney-General; or

(b) the communication or production to a person of, or of information or documents concerning, particulars furnished to the Commissioner of an agreement to which, according to those particulars, that person is or has been a party.

(5.) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to and “production” has a corresponding meaning.

PART IV.—EXAMINABLE AGREEMENTS AND PRACTICES.

Agreements
between
competitors
containing
certain
restrictions.

35.—(1.) An agreement is an examinable agreement for the purposes of this Act if, whether as originally made or by reason of a subsequent variation, it is an agreement the parties to which are or include two or more persons, at least one of which is a corporation, carrying on businesses that are competitive with each other and each of which is a business of the supply of goods or services and if it is an agreement under which a restriction of any of the kinds referred to in the next succeeding sub-section is accepted by a corporation, being one of those persons, in relation to any such business, whether or not the restriction is accepted by another of those persons.

(2.) The restrictions referred to in the last preceding sub-section are restrictions in respect of—

- (a) the terms or conditions, whether as to prices or as to any other matter, upon or subject to which dealings may be engaged in;
- (b) the concessions or benefits, including allowances, discounts, rebates or credit, that may be given or allowed in connexion with, or by reason of, dealings;
- (c) the quantities, qualities, kinds or extent of goods or services that may be produced, acquired, held in stock or supplied, or the resources or methods that may be used, or the resources that may be acquired or maintained for use;
- (d) the places in, to or from which goods or services may be supplied; or
- (e) the persons or classes of persons who may be dealt with, or the circumstances in which, or the conditions subject to which, persons or classes of persons may be dealt with.

(3.) For the purposes of this section, two or more businesses are competitive with each other where the businesses are, in whole or in part, competitive with each other in relation to the supply or acquisition of goods or services, including acquisition of materials, or, but for any

agreement of a kind referred to in sub-section (1.) of this section, would be, or would be likely to become, so competitive, whether or not the businesses relate to the same kind of goods or services.

(4.) The agreements referred to in sub-section (1.) of this section do not include an agreement the only parties to which are two or more bodies corporate that are related to each other.

(5.) In determining whether an agreement is an examinable agreement, regard shall not be had—

- (a) to any provision of the agreement that is, or is of a kind, specifically authorized or approved by, or by regulations under, an Act;
- (b) to any provision of the agreement that is, or is of a kind, specifically authorized or approved by, or by regulations under, a State Act or an Ordinance of a Territory, except to the extent that the provision gives rise to a restriction to be observed in another State or Territory;
- (c) to any provision of the agreement relating to the remuneration, conditions of employment, hours of work or working conditions of employees;
- (d) to any provision of the agreement obliging a person to comply with or apply standards prepared or approved by the Standards Association of Australia or by a prescribed association or body;
- (e) in the case of an agreement for the sale of a business—to any provision of the agreement that is solely for the protection of the purchaser in respect of the goodwill of the business;
- (f) in the case of an agreement for or in respect of—
 - (i) a licence granted or to be granted by the proprietor, licensee or owner of a patent, a registered design or copyright or by a person who has applied for a patent or for the registration of a design; or
 - (ii) an assignment of a patent, a registered design or copyright or of the right to apply for a patent or for the registration of a design,

to any condition of the licence or assignment relating exclusively to—

- (iii) the invention to which the patent or application for a patent relates or articles made by the use of that invention;
 - (iv) goods in respect of which the design is or is proposed to be registered and to which it is applied; or
 - (v) the work or other subject matter in which the copyright subsists;
- (g) in the case of an agreement authorizing the use of a certification trade mark—to any provision included in the agreement in accordance with rules applicable under Part XI. of the *Trade Marks Act 1955-1966*; or

- (h) in the case of an agreement between the registered proprietor of a trade mark other than a certification trade mark and a person authorized by the agreement to use the trade mark subject to registration as a registered user under Part IX. of the *Trade Marks Act 1955–1966*—to any provision of the agreement with respect to the kinds, qualities or standards of goods bearing the mark that may be produced or supplied.

Examinable
practices.

36.—(1.) Practices of the following kinds are examinable practices for the purposes of this Act:—

- (a) in or in connexion with the acquisition, or possible acquisition, of goods by a corporation from a person, inducing or attempting to induce that person by any express or implied threat or promise to accept terms as to price or any other matter or conditions, including collateral conditions, that are more favourable to the corporation than those upon or subject to which that person is willing to supply goods of the same kind and quantity to business competitors generally of the corporation, where the more favourable terms or conditions are, or would be, likely to lessen substantially the ability of a person to compete with the corporation;
- (b) in or in connexion with the acquisition, or possible acquisition, of goods by a person from a corporation, inducing or attempting to induce that corporation by any express or implied threat or promise to accept terms as to price or any other matter or conditions, including collateral conditions, that are more favourable to that person than those upon or subject to which that corporation is willing to supply goods of the same kind and quantity to business competitors generally of that person, where the more favourable terms or conditions are, or would be, likely to lessen substantially the ability of a person to compete with the first-mentioned person;
- (c) the requiring by a corporation, as a condition of the supply of goods or services to a person carrying on a business, that that person acquire all or a part of his requirements of goods or services of another class directly or indirectly from a second person;
- (d) the requiring by a person, as a condition of the supply of goods or services to a corporation carrying on a business, that that corporation acquire all or a part of its requirements of goods or services of another class directly or indirectly from a second person;
- (e) the inducing by a corporation of a person carrying on a business to refuse to deal with a second person, or to refuse to deal with a second person except on terms disadvantageous to the second person, where the corporation—
- (i) is a trade association or is acting as a member of, or on behalf of, a trade association; or

- (ii) is acting, in connexion with the carrying on of a business by it, in pursuance of an agreement with, or in concert with, another person carrying on a business;
- (f) the inducing by a person of a corporation carrying on a business to refuse to deal with a second person, or to refuse to deal with a second person except on terms disadvantageous to the second person, where the first-mentioned person—
 - (i) is a trade association or is acting as a member of, or on behalf of, a trade association; or
 - (ii) is acting, in connexion with the carrying on of a business by him, in pursuance of an agreement with, or in concert with, another person carrying on a business; or
- (g) the attempting by a corporation or another person to induce as mentioned in either of the last two preceding paragraphs.

(2.) Where a body corporate and a corporation are related to each other, the last preceding sub-section does not apply with respect to anything done to or in relation to that body corporate by that corporation or to or in relation to that corporation by that body corporate.

(3.) Where a person, being a body corporate, and a second person, being a body corporate, are related to each other, sub-section (1.) of this section has effect as if those persons were one person.

37.—(1.) The engaging by a corporation in monopolization within the meaning of this section is an examinable practice for the purposes of this Act. Monopolization
an examinable
practice.

(2.) For the purposes of this section, a corporation engages in monopolization if, being in a dominant position in the trade in goods of a particular description, or in the supply of services of a particular description, in Australia or in a part of Australia, it takes advantage of that position so as to—

- (a) induce or attempt to induce a person carrying on a business to refuse to deal with a second person or to refuse to deal with a second person except on terms disadvantageous to the second person;
- (b) engage in price-cutting with the object of substantially damaging the business of a competitor or preventing a possible competitor from entering into competition with it; or
- (c) impose prices or other terms or conditions of dealing that it would be unable to impose but for its dominant position.

(3.) The Tribunal shall not regard as a part of Australia for the purposes of this section an area that does not include the whole of a State or Territory unless it is satisfied that it is appropriate to do so having regard to the substantial size of the area and the significance of the area as a market area.

(4.) The Tribunal shall not regard a description of goods or services as being a particular description of goods or services for the purposes of this section if the Tribunal considers that it would be unreasonable to do so having regard to the fact that other goods or services are competitive with goods or services that are included in the description and to the extent to which those other goods or services are so competitive.

(5.) For the purposes of this section, the Tribunal shall regard a corporation as being in a dominant position in the trade in goods of a particular description, or in the supply of services of a particular description, in Australia or in a part of Australia if, and only if, the Tribunal is satisfied that that corporation, or a combination of which that corporation is a member, is the supplier of not less than one-third, by quantity or value, of the goods, including imported goods, or services of that description that are supplied in Australia or in that part of Australia, whether, in the case of goods, the corporation or combination supplies the goods by wholesale, by retail or otherwise.

Exemptions
in respect of
practices.

38.—(1.) In determining whether a corporation or another person has engaged, is engaging or proposes to engage in an examinable practice, regard shall not be had to any act or thing that is, or is of a kind, specifically authorized or approved by, or by regulations under, an Act.

(2.) In determining whether a corporation or another person has engaged, is engaging or proposes to engage in an examinable practice by reason of acts or things done or proposed to be done in a particular State or Territory, regard shall not be had to any act or thing that is, or is of a kind, specifically authorized or approved by, or by regulations under, an Act of that State or an Ordinance of that Territory.

(3.) In determining whether a corporation or another person has engaged, is engaging or proposes to engage in an examinable practice other than a practice of monopolization, regard shall not be had to a provision or condition referred to in paragraphs (c) to (h) (inclusive) of sub-section (5.) of section 35 of this Act or to an act or thing done in pursuance of such a provision or condition.

(4.) In determining whether a corporation has engaged, is engaging or proposes to engage in an examinable practice of monopolization, regard shall not be had to a provision referred to in paragraph (c), (d) or (e) of sub-section (5.) of section 35 of this Act or to an act or thing done in pursuance of such a provision.

(5.) In relation to monopolization, the reference in sub-section (1.) of this section to an Act does not include a reference to an Act relating to patents, trade marks, designs or copyrights.

Combinations.

39. For the purposes of this Act—

(a) two or more corporations constitute a combination in relation to goods or services of any description if those corporations so

conduct their affairs as in any way to restrict or prevent competition between them in connexion with the supply of those goods or services; and

- (b) two or more corporations constitute a combination if those corporations are related to each other and each of them is included in any other combination in which any of them is included.

PART V.—REGISTRATION OF CERTAIN AGREEMENTS.

40.—(1) For the purposes of this Act, the Commissioner shall cause to be kept a register to be known as the Register of Trade Agreements. Register to be kept.

(2) Subject to this Act and the regulations, the Register shall be kept in such form and manner as the Commissioner directs.

41.—(1) Subject to this section—

- (a) an agreement made before the date of commencement of this Act that is, on that date, an examinable agreement becomes subject to registration under this Part on that date;
- (b) an agreement made on or after that date that is, when made, an examinable agreement becomes subject to registration under this Part upon the making of the agreement; and
- (c) an agreement, whether made before or after that date, that becomes an examinable agreement at a time after the making of the agreement, being a time after the commencement of this Act, becomes subject to registration under this Part at that time.

Agreements subject to registration.

(2) If the only relevant restrictions under an examinable agreement relate exclusively to the supply or acquisition of services, the agreement is exempt from registration under this Part unless those services are or include services by way of—

- (a) the production, construction, maintenance, repair, treatment, processing, cleaning or alteration of goods or of fixtures on land;
- (b) the alteration of the physical state of land;
- (c) the distribution of goods; or
- (d) the transportation of goods.

(3) Where an agreement that is, by virtue of the last preceding subsection, exempt from registration under this Part is so varied that, while remaining an examinable agreement, it ceases to be so exempt, the agreement becomes subject to registration under this Part on the day on which it is so varied.

42.—(1) Where an agreement has become subject to registration under this Part, particulars of the agreement, in accordance with this section and verified as required by this section, shall be furnished to the Commissioner within the period of thirty days after the date on which the agreement became subject to registration. Particulars to be furnished of certain agreements, variations and determinations.

(2.) In the case of an agreement that becomes subject to registration on a date subsequent to the date of making of the agreement, the particulars required to be furnished are particulars of the agreement as varied, whether in respect of the parties or in respect of the terms, by any variations made before or on the day on which the agreement becomes subject to registration.

(3.) The duty to furnish particulars under this section in respect of an agreement that has become subject to registration is not affected by any subsequent variation or determination of the agreement, and if, at any time after an agreement becomes subject to registration, the agreement is varied, whether in respect of the parties or in respect of the terms, or is determined otherwise than by effluxion of time, then, except as otherwise prescribed, particulars of the variation or determination, verified as required by this section, shall be furnished to the Commissioner within the period of thirty days after the day on which the variation or determination occurred.

(4.) The requirements of this section may be complied with—

- (a) in respect of an agreement—by any party to the agreement; or
- (b) in respect of a variation or determination of an agreement—by any person who was a party to the agreement immediately before, or was a party to the agreement immediately after, the variation or determination.

(5.) Subject to the regulations, the particulars to be furnished of an agreement are—

- (a) the names of the parties to the agreement and the date of the agreement; and
- (b) the whole of the terms of the agreement, whether or not relating to relevant restrictions.

(6.) The particulars to be furnished of an agreement, or of a variation or determination of an agreement, shall be furnished—

- (a) in so far as the particulars are contained in an instrument in writing by which the agreement, variation or determination was, in whole or in part, made or effected—by lodging a true copy of that instrument; and
- (b) in so far as the particulars are not contained in such an instrument, whether or not there is such an instrument—by lodging a memorandum of those particulars,

verified as a true copy or a full and correct memorandum, as the case requires, by statutory declaration of the person by whom the particulars are furnished or of a competent person authorized by that person.

(7.) The regulations may provide for excluding any particulars from the particulars required to be furnished under this Part and, in particular, for excluding all or any of such particulars as to persons, prices, terms or other matters as are material for the purpose only of defining the particular application from time to time of continuing restrictions.

(8.) A person referred to in sub-section (4.) of this section may, before the expiration of the time within which, but for this sub-section, the particulars are required to be furnished, apply in writing to the Commissioner for an extension of that time and, where such an application is made, the time within which the particulars are required to be furnished shall be taken not to expire—

- (a) whether or not the application is granted—before the expiration of fourteen days after the date on which the Commissioner informs the applicant in writing of his decision on the application; or
- (b) if the application is granted—before the expiration of the period of the extension granted by the Commissioner.

43.—(1.) If the requirements of the last preceding section are not complied with in respect of an agreement, every corporation that was a party to the agreement when it became subject to registration is guilty of an offence.

Failure to
furnish
particulars
an offence.

(2.) If the requirements of the last preceding section are not complied with in respect of a variation or determination of an agreement, every corporation that was a party to the agreement immediately before, or immediately after, the variation or determination is guilty of an offence.

(3.) The penalty for an offence against this section is a fine not exceeding Two thousand dollars.

(4.) It is a defence to a prosecution for an offence against this section if the corporation charged satisfies the Court that—

- (a) it did not, within the time allowed for the furnishing of the particulars, advert to the question whether particulars of the agreement, variation or determination were required by this Act to be furnished to the Commissioner and that its failure to advert to that question was not attributable to a desire to avoid, or to indifference to, its obligations;
- (b) it reasonably relied on another party, or on a trade association of which it was a member, to ensure that the required particulars were duly furnished; or
- (c) it believed in good faith that particulars of the agreement, variation or determination furnished to the Commissioner by it within the time allowed complied with the requirements of this Act,

and that either the particulars, or the necessary further or amended particulars, were duly furnished, except as regards time, by itself or another party before the institution of the prosecution or it did not know or suspect, before the institution of the prosecution, that there had been default in compliance with the requirements of this Act with respect to the furnishing to the Commissioner of particulars of the agreement, variation or determination.

Registration by
Commissioner.

44. Where particulars of an agreement, or of a variation or determination of an agreement, are duly furnished to the Commissioner in accordance with this Part, or where those particulars are duly furnished except that the time allowed for furnishing the particulars has expired, the Commissioner shall register the agreement, variation or determination by filing in the Register the document containing the particulars.

Register to
be evidence.

45. In proceedings under this Act before the Tribunal or the Court, other than proceedings for an offence against section 43 of this Act, particulars of an agreement, or of a variation or determination of an agreement, as appearing from the Register are evidence of the agreement, variation or determination.

PART VI.—EXAMINATION OF AGREEMENTS AND PRACTICES BY THE
TRIBUNAL.

Division 1.—General.

Interpretation.

46. In this Part, the expression “is contrary to the public interest” shall, so far as necessary, be read as including the expressions “was contrary to the public interest” and “would be contrary to the public interest” and other expressions relating to the public interest shall be similarly construed.

Institution of
proceedings.

47.—(1.) Subject to the next succeeding section, where—

(a) the Commissioner has reason to believe, on the basis of information available to him from the Register or from any other source, that an examinable agreement exists or has existed after the commencement of this Act; and

(b) the Commissioner is of opinion that any relevant restriction accepted under the agreement is contrary to the public interest, he may institute proceedings in the Tribunal under this section in respect of that restriction.

(2.) Subject to the next succeeding section, where the Commissioner has reason to believe that a corporation or another person has, after the commencement of this Act, engaged, is engaging or proposes to engage in an examinable practice and the Commissioner is of opinion that the practice is contrary to the public interest, he may institute proceedings in the Tribunal under this section in respect of the practice.

(3.) Proceedings under this section shall be instituted as prescribed.

(4.) The Tribunal may, at any time, grant leave to the Commissioner to discontinue proceedings under this section.

(5.) The Attorney-General may, by writing under his hand, direct the Commissioner to investigate the facts and circumstances with respect to an examinable agreement or examinable practice or an alleged examinable

agreement or examinable practice with a view to deciding whether proceedings under this section should be instituted and to report to the Attorney-General the results of the investigation.

(6.) In instituting proceedings under this section, the Commissioner shall file with the Registrar a document giving, as fully as he is able, particulars of the relevant agreement (if any) and of the restriction or practice to which the proceedings relate, but so that any particulars that are set out in a document filed in the Register may be given by appropriate reference to the Register.

(7.) Where proceedings have been instituted under this section, the Commissioner shall cause notice of the proceedings, together with a copy of the document first referred to in the last preceding sub-section, to be served, as prescribed, on each other party to the proceedings.

(8.) The Commissioner may, at any stage of the proceedings, by leave of the Tribunal, amend the particulars referred to in sub-section (6.) of this section, whether by reason of a variation of the relevant agreement or practice, or otherwise.

48.—(1.) The Commissioner shall not institute proceedings under the last preceding section unless he has first carried on, or endeavoured to carry on, either personally or through members of his staff with adequate knowledge of, or experience in, industry or commerce, consultations with the persons who would be the other parties to the proceedings, or with representatives of those persons, with a view to securing such undertaking or action by those persons, for or by way of determination, cessation or variation of the agreement or practice concerned or otherwise, as will render the proposed proceedings unnecessary.

Commissioner to consult parties with a view to avoiding proceedings.

(2.) In connexion with consultations under the last preceding sub-section, the Commissioner may agree to apply to the Tribunal for leave to file a certificate under section 59 of this Act in respect of any restriction or practice or proposed restriction or practice.

(3.) Where a person (other than the Commissioner) taking part in consultations under this section indicates his wish that the consultations, or any part of the consultations, be on a "without prejudice" basis, evidence of any statement, admission or offer made by a person (including the Commissioner) in the consultations, or in that part of the consultations, as the case may be, shall not be admitted in proceedings before the Tribunal under this Act except with the consent of all parties to the proceedings.

49.—(1.) In proceedings under section 47 of this Act, if the Tribunal, after such inquiry as it considers appropriate having regard to the matters alleged by the Commissioner, is satisfied that an examinable agreement exists or has existed, or an examinable practice has been, is being or is

Inquiry and determination by Tribunal.

proposed to be, engaged in, the Tribunal shall make a determination by which it—

- (a) records its findings as to those matters, including its findings as to the parties to, and terms of, the agreement, or the particulars of the examinable practice; and
- (b) determines, in accordance with its opinion, whether the relevant restrictions to which the proceedings relate are contrary to the public interest or the examinable practice is contrary to the public interest, as the case requires.

(2.) Where the Tribunal makes a determination under this section, it shall state, and record in the records of the Tribunal, the reasons for its opinion that the restriction or practice is, or is not, contrary to the public interest.

(3.) The Tribunal shall not find that a practice of monopolization is proposed to be engaged in unless the Tribunal is satisfied that the corporation concerned is already, within the meaning of section 37 of this Act, in a dominant position in the trade in goods of the particular description concerned, or in the supply of services of the particular description concerned, in Australia or in a part of Australia.

The public interest.

50.—(1.) In considering whether a restriction, or a practice other than a practice of monopolization, is contrary to the public interest, the Tribunal shall take as the basis of its consideration the principle that the preservation and encouragement of competition are desirable in the public interest but shall weigh against the detriment constituted by any proved restriction of, or tendency to restrict, competition any effect of the restriction or practice as regards any of the matters referred to in the next succeeding sub-section if that effect tends to establish that, on balance, the restriction or the practice is not contrary to the public interest.

(2.) The matters that are to be taken into account in accordance with the last preceding sub-section are—

- (a) the needs and interests of consumers, employees, producers, distributors, importers, exporters, proprietors and investors;
- (b) the needs and interests of small businesses;
- (c) the promotion of new enterprises;
- (d) the need to achieve the full and efficient use and distribution of labour, capital, materials, industrial capacity, industrial know-how and other resources;
- (e) the need to achieve the production, provision, treatment and distribution, by efficient and economical means, of goods and services of such quality, quantity and price as will best meet the requirements of domestic and overseas markets; and
- (f) the ability of Australian producers and exporters to compete in overseas markets.

(3.) In considering the public interest in relation to a practice of monopolization, the Tribunal shall weigh against any detriment, including detriment constituted by any proved restriction of, or tendency to restrict, competition, that has resulted, or can be expected to result, from the practice any effect of the practice as regards any of the matters referred to in the last preceding sub-section if that effect tends to establish that, on balance, the practice is not contrary to the public interest.

51.—(1.) Where the Tribunal determines that a restriction accepted under an examinable agreement is contrary to the public interest, the agreement (if in force) becomes, upon the date of the determination, unenforceable on the part of or against a corporation as regards observance of the restriction on and after that date. Effect of determinations.

(2.) Where the Tribunal determines that a practice is contrary to the public interest and finds that the practice is provided for by an agreement, the agreement (if in force) becomes, upon the date of the determination, unenforceable as regards engaging in the practice on and after that date.

(3.) Where the Tribunal determines that a restriction or practice is contrary to the public interest, a transaction entered into, whether before or after the making of the determination, in pursuance of the restriction or in accordance with the practice is not illegal or unenforceable by reason only of the making of that determination.

52.—(1.) Where the Tribunal determines that a restriction accepted under an examinable agreement is contrary to the public interest, the Tribunal may make such orders as it thinks proper for restraining all or any of the parties to the agreement, being corporations, from— Orders in consequence of determinations.

- (a) giving effect to, or enforcing or purporting to enforce, the agreement in respect of that restriction or any restriction to the like effect; or
- (b) entering into any other agreement, whether with the same parties or with other parties, under which any restriction to the like effect is accepted.

(2.) Where the Tribunal determines that a practice is contrary to the public interest, it may make such orders as it thinks proper for restraining the corporation or other person concerned—

- (a) from engaging or further engaging in the practice;
- (b) from engaging in practices of a like kind; or
- (c) from doing acts or things that, in the opinion of the Tribunal, would, unless there were a change in circumstances, amount to, or contribute to, a continuance or repetition of the practice or engagement in a practice of a like kind.

(3.) Where the Tribunal determines that a restriction accepted under an agreement to which any member or members of a trade association are parties, or a practice on the part of any member or members of a trade

association, is contrary to the public interest, the Tribunal may, in addition to making any other order, make such orders restraining the association, being a corporation, or a corporation acting on behalf of the association, from making or purporting to make any recommendation or doing or purporting to do any other act or thing as the Tribunal thinks necessary—

- (a) for ensuring the effective operation of any order arising out of the determination; or
- (b) for ensuring that further restrictions to the like effect do not become applicable under the agreement.

(4.) Where the Tribunal finds that a practice that it has determined to be contrary to the public interest is provided for by an agreement, the Tribunal may make such orders as it thinks proper—

- (a) for restraining all or any of the parties to the agreement from giving effect to, enforcing or purporting to enforce the agreement in respect of that practice; or
- (b) for restraining a person engaging in the practice under the agreement from entering into any other agreement, whether with the same parties or with other parties, by which the practice, or any practice of a like kind, is provided for.

(5.) Where an order of the Tribunal under this section restrains a person from entering into an agreement of a specified description, the order shall, unless the contrary intention appears in the order, be deemed to be expressed, and to operate, also to restrain that person from giving effect to, enforcing or purporting to enforce—

- (a) an agreement entered into by that person in contravention of the order; or
- (b) an agreement entered into by that person after the commencement of the proceedings and before the making of the order, being an agreement of the specified description,

in respect of any matter by reason of which the agreement is of the specified description.

(6.) In relation to an order or proposed order of the Tribunal, a reference in this section to any restriction to the like effect or to any practice of a like kind shall be read as including a reference to every restriction or practice, as the case may be, that is included in a class or description of restrictions or practices that is declared by the order to be, in the opinion of the Tribunal, a class or description of restrictions to the like effect or of practices of a like kind, as the case may be, but this subsection does not prevent the Tribunal from referring in an order in general terms to restrictions to the like effect or practices of a like kind.

(7.) Subject to section 57 of this Act, orders of the Tribunal have the force of law.

53. An order under the last preceding section, or an order varying such an order, takes effect on such date as is fixed by the Tribunal and, in fixing the date, the Tribunal shall, where it can do so without serious detriment to the public interest, allow reasonable time for the persons affected by the order to make orderly arrangements for the conduct of their businesses consistently with the order.

Date of effect of orders.

54.—(1.) Where proceedings instituted by the Commissioner under section 47 of this Act are pending and the Tribunal is satisfied that—

Interim restraining orders.

(a) unless action is taken under this section, there is likely to be grave hardship to a person or irremediable injury to the public interest; and

(b) it is reasonable to do so, having regard to decisions previously given by the Tribunal in relation to agreements or practices similar to the agreement or practice to which the proceedings relate,

the Tribunal may make such interim orders as it thinks fit, being orders of a kind that can be made under this Division where a restriction or practice is determined to be contrary to the public interest.

(2.) An order under this section has effect, unless it sooner ceases to have effect by virtue of its terms or is sooner revoked by the Tribunal, until the determination of the pending proceedings but may, upon the determination of those proceedings, be continued by the Tribunal until an order, not being an interim order, made in those proceedings takes effect.

55.—(1.) Subject to this section, proceedings under section 47 of this Act in respect of an agreement shall relate to the agreement as in force immediately before the institution of the proceedings.

Effect of variation or determination of agreement.

(2.) Where an agreement that was an examinable agreement has been determined, by effluxion of time or otherwise, or has been so varied that a restriction under the agreement has ceased to be in force, the Commissioner may, with the leave of the Tribunal constituted by a presidential member, institute proceedings under section 47 of this Act in respect of a restriction that was accepted under the determined agreement, or in respect of the restriction that has ceased to be in force, as the case may be.

(3.) Leave shall not be granted under the last preceding sub-section for the institution of proceedings in respect of a restriction unless the Tribunal is satisfied that there are reasonable grounds for believing that the parties, or former parties, to the agreement or any of them have entered into, or are likely to enter into, another examinable agreement, or a further variation of the agreement, under which a restriction to the like effect is or may be accepted.

(4.) If, while proceedings under section 47 of this Act in respect of an agreement are pending, it is shown to the Tribunal that the agreement

has been determined, by effluxion of time or otherwise, since the institution of the proceedings, the Tribunal may, if the Commissioner requests it to do so, continue the proceedings in respect of the determined agreement but otherwise shall dismiss the proceedings.

(5.) If, while proceedings under section 47 of this Act in respect of an agreement are pending, it is shown to the Tribunal that the agreement has been varied since the institution of the proceedings, the Tribunal may, if the Commissioner requests it to do so, continue the proceedings—

- (a) in respect of the agreement as it existed before the variation; or
- (b) in respect of the agreement as varied,

or both, but otherwise shall dismiss the proceedings.

Effect of
variation or
abandonment
of practice.

56.—(1.) The Commissioner shall not institute proceedings under section 47 of this Act in respect of a practice unless—

- (a) the proceedings relate to a practice that the Commissioner alleges is being, or is proposed to be, engaged in; or
- (b) the Tribunal constituted by a presidential member has granted leave to institute the proceedings.

(2.) Leave shall not be granted under the last preceding sub-section for the institution of proceedings in respect of a practice unless the Tribunal is satisfied that there are reasonable grounds for believing that the corporation or other person concerned is likely to engage again in the practice or to engage in a practice of a like kind, or that a combination in which that corporation is or will be included is likely to engage in a practice of a like kind.

(3.) If, while proceedings under section 47 of this Act in respect of a practice are pending, it is shown to the Tribunal that the practice has ceased to be engaged in since the institution of the proceedings, the Tribunal may, if the Commissioner requests it to do so, continue the proceedings in respect of the former practice but otherwise shall dismiss the proceedings.

(4.) If, while proceedings under section 47 of this Act in respect of a practice are pending, it is shown to the Tribunal that the practice has been varied since the institution of the proceedings, the Tribunal may, if the Commissioner requests it to do so, continue the proceedings—

- (a) in respect of the practice as it existed before the variation; or
- (b) in respect of the practice as varied,

or both, but otherwise shall dismiss the proceedings.

Duration and
operation of
orders.

57.—(1.) A determination or order of the Tribunal under this Division, other than an interim order, remains in force, subject to Division 3 of this Part and to any variation made in accordance with this Division, until rescinded by the Tribunal in accordance with the next succeeding section.

(2.) An order of the Tribunal under this Division is binding only on the persons on whom it is expressed to be binding.

(3.) Subject to the next succeeding sub-section, an order of the Tribunal under this Division shall not be expressed to be binding on a person unless that person, or a person appointed, in accordance with the regulations, to represent that person in the proceedings, was a party to the proceedings.

(4.) Where a trade association, an officer of a trade association or a person appointed, in accordance with the regulations, to represent all or any of the members of a trade association is a party to proceedings, an order under this Division in those proceedings may be expressed to bind all or any persons, being corporations, from time to time acting on behalf of the trade association.

58.—(1.) The Tribunal may, upon application made by leave granted in accordance with this section—

(a) by order, rescind or vary an order made in consequence of a determination; or

(b) by order, rescind a determination in respect of a restriction or practice and any order made in consequence of the determination, and substitute such other determination, and make such order in consequence of the substituted determination, as appears to the Tribunal to be proper.

(2.) In the application of this section in relation to Part VII., the Tribunal—

(a) may, by order, give such directions as it thinks fit as to giving notice of the application; and

(b) may make an order rescinding a determination without substituting another determination for it.

(3.) Subject to the next succeeding sub-section, an application under this section may be made by the Commissioner or by any person affected by the previous determination or order.

(4.) An application under this section shall not be made except with the leave of the Tribunal constituted by a presidential member and leave shall not be granted unless the presidential member is satisfied that there has been such a change in circumstances as to justify a re-consideration of the determination or order.

(5.) The circumstances to which the Tribunal is to have regard for the purposes of the last preceding sub-section include later decisions of the Tribunal in analogous cases.

(6.) Where the Tribunal rescinds a determination by virtue of which an agreement has become, in whole or in part, unenforceable, the agreement becomes, in relation to matters arising after the rescinding order comes

Further consideration by Tribunal of determinations and orders upon change of circumstances.

into operation, enforceable to the same extent as it would have been if the original determination had not been made.

(7.) This Act applies to and in relation to determinations and orders under this section in like manner as it applies to and in relation to determinations and orders under sections 49 and 52 of this Act or under Part VII., as the case requires.

(8.) Nothing in this section authorizes the making or variation of an order or determination if the order or determination is not, or the order or determination as varied would not be, an order or determination that could be made under this Division.

Division 2.—Negative Clearances.

Certificate that agreement or practice not contrary to public interest.

59.—(1.) Where the Commissioner is satisfied that a restriction under an examinable agreement, or an examinable practice, is not contrary to the public interest, he may, with the leave of the Tribunal constituted by a presidential member, file with the Registrar a certificate to that effect, giving particulars of the agreement, and of the particular restriction, to which the certificate relates or particulars of the practice to which the certificate relates.

(2.) While a certificate filed under this section remains unrevoked, proceedings under section 47 of this Act shall not be instituted in respect of the restriction or practice to which the certificate relates.

(3.) A certificate under this section may, with the leave of the Tribunal, be revoked by the Commissioner by notice of revocation filed with the Registrar.

(4.) Leave to revoke a certificate under this section shall not be granted unless the Tribunal is satisfied that there has been such a change in circumstances since the certificate was filed as to make it reasonable to permit a revocation of the certificate.

(5.) The circumstances to which the Tribunal is to have regard for the purposes of the last preceding sub-section include decisions of the Tribunal in analogous cases since the date on which the certificate was filed.

(6.) The Commissioner is not required to give consideration to the filing of a certificate under this section except where—

- (a) the Tribunal gives a direction under the next succeeding section;
- or
- (b) it is necessary to do so for the purposes of section 48 of this Act.

(7.) In this section—

“examinable agreement” includes a proposed agreement that would be, or might be, an examinable agreement;

“examinable practice” includes a proposed practice that would be, or might be, an examinable practice;

“restriction” includes a proposed restriction.

60.—(1.) A person who is, or proposes to become, a party to an agreement that is or may be an examinable agreement, or a person who is engaged or proposes to engage in a practice that is or may be an examinable practice, may apply to the Tribunal constituted by a presidential member for an order under this section in respect of all or any of the restrictions accepted or proposed to be accepted under the agreement or in respect of the practice.

Proceedings
before Tribunal.

(2.) If, on an application under this section—

(a) the Tribunal is satisfied that the application arises out of a proposal for a new venture, or for a substantial extension of an existing venture, and there is furnished to the Tribunal a statutory declaration by the applicant, or by a person acting on behalf of the applicant and having, in the opinion of the Tribunal, sufficient means of knowledge, by which it is declared that—

- (i) a restriction or practice in respect of which the application is made is necessary to the success of the venture or of the extension of the venture; and
- (ii) the proposal will not be, or is unlikely to be, carried out unless there is an assurance of the legality of the restriction or practice; or

(b) the Tribunal is satisfied that—

- (i) the application relates to a restriction or practice in respect of which consultations have been commenced in accordance with section 48 of this Act;
- (ii) a reasonable period for the consultations has elapsed; and
- (iii) the Commissioner has neither instituted proceedings under section 47 of this Act in respect of the restriction or practice nor applied for leave to file a certificate under section 59 of this Act as a result of the consultations,

the Tribunal may, in its discretion, by order, direct the Commissioner to take action in accordance with this section in respect of the restriction or practice.

(3.) Where a direction is given under the last preceding sub-section, the Commissioner shall, as expeditiously as practicable, make any necessary inquiries and either—

- (a) apply for leave to file a certificate under section 59 of this Act in respect of the restriction or practice; or
- (b) institute proceedings in the Tribunal under section 47 of this Act in respect of the restriction or practice.

(4.) Where—

- (a) the Tribunal gives a direction under sub-section (2.) of this section by reason of the provisions of paragraph (a) of that sub-section; and

(b) as a result of the direction, the Commissioner applies for leave to file a certificate under section 59 of this Act,

the Commissioner shall state in his application for leave a proposed minimum period of operation of the certificate, not being less than five years, and, if leave to file a certificate is granted, the certificate filed shall specify that period as the minimum period of operation of the certificate.

(5.) An application for leave to revoke the certificate shall not be made before the period so specified has elapsed since the filing of the certificate.

(6.) Where—

(a) the Tribunal gives a direction under sub-section (2.) of this section by reason of the provisions of paragraph (a) of that sub-section;

(b) as a result of the direction, the Commissioner institutes proceedings in the Tribunal in respect of the restriction or practice to which the direction relates; and

(c) the Tribunal, in those proceedings, determines that the restriction or practice is not contrary to the public interest,

the determination shall specify a period, not being less than five years, as the minimum period of operation of the determination.

(7.) An application by the Commissioner under section 58 of this Act for leave to apply for rescission of the determination shall not be made before the period so specified has elapsed since the making of the determination.

(8.) In relation to proceedings instituted in pursuance of a direction under this section, the provisions of Division 1 of this Part have effect subject to such modifications as are necessary and, in particular, as if references to agreements included references to proposed agreements and to agreements as proposed to be varied.

(9.) The Tribunal may rescind a direction under this section on the application of the person on whose application the direction was given and in that event the Commissioner is not required to take any further action in respect of the direction.

*Division 3.—Review of Determinations and Judicial
Determination of Questions of Law.*

Constitution of
Review
Division.

61. A Review Division of the Tribunal shall be constituted by three presidential members but shall not include the presidential member who heard, or presided at the hearing of, the proceedings in which the determination of which a reconsideration is sought was made.

62.—(1.) Where the Tribunal has made a determination in any proceedings, a party to the proceedings may, as prescribed and within the time allowed by or under the regulations, file with the Registrar an application for an order of a Review Division of the Tribunal directing a reconsideration of the determination on any of the following grounds:—

Application for reconsideration of determination.

- (a) that the determination is based on reasons that are inconsistent with the reasons for another decision of the Tribunal;
- (b) that the determination is of such importance that, in the public interest, it should be reconsidered; and
- (c) that a material error of law was made by the Tribunal in the hearing or determining of the proceedings.

(2.) Where an application is filed under this section in relation to a determination that a restriction or practice is contrary to the public interest, the determination, and any orders made in consequence of the determination, shall be deemed not to have, or to have had, any effect at any time before the day next following—

- (a) the day on which the application is disposed of; or
- (b) if an order is made directing a reconsideration of the determination, the day on which the decision of the Tribunal on the reconsideration is made.

63.—(1.) An application under the last preceding section shall be heard and determined by a Review Division of the Tribunal.

Hearing of application.

(2.) The Review Division shall not receive fresh evidence.

(3.) If the Review Division finds that the ground of the application has been established, it may, in its discretion, make an order directing a reconsideration of the determination.

(4.) Where a Review Division makes an order under this section, it shall specify—

- (a) where the order is made on the ground referred to in paragraph (a) of sub-section (1.) of the last preceding section—the nature of the inconsistency;
- (b) where the order is made on the ground referred to in paragraph (b) of that sub-section—the matters that, in its opinion, should be considered or further considered; or
- (c) where the order is made on the ground referred to in paragraph (c) of that sub-section—the error of law.

64.—(1.) Where the reconsideration of a determination has been directed under this Division, the Tribunal shall consider or further consider—

Reconsideration by Tribunal.

- (a) such matters as appear from the order of the Review Division to require consideration or further consideration; or

- (b) such matters as, in its opinion, require consideration or further consideration as a consequence of the consideration or further consideration of the matters referred to in the last preceding paragraph,

and shall either confirm the determination or make a determination having the effect of varying the previous determination.

(2.) In proceedings under this section, the Tribunal shall accept and act on all findings of fact that were made in the proceedings that resulted in the determination that is being reconsidered, except to the extent that it considers that the order of the Review Division makes it inappropriate to do so.

(3.) Where, under this section, the Tribunal confirms a determination, it may confirm, with or without variation, any order made in consequence of the determination and where, under this section, the Tribunal makes a determination having the effect of varying a previous determination, any orders made in consequence of the previous determination shall be deemed to be revoked.

(4.) This Act applies, subject to such modifications as are necessary, as if proceedings under this section were proceedings under Division 1 of this Part or under Part VII., as the case may be, and the Tribunal may make orders accordingly.

(5.) The Tribunal as constituted in accordance with section 16 of this Act for the purposes of proceedings under this section may consist of or include the member, or all or any of the members, who constituted the Tribunal for the purposes of the proceedings in which the determination that is to be reconsidered was made.

Reference of
questions of
law to
Commonwealth
Industrial
Court.

65.—(1.) The Tribunal, not being the Tribunal constituted as a Review Division, may, of its own motion, or, if it thinks fit, on the application of a party, refer a question of law arising in proceedings before it for determination by the Court but a decision so to refer a question shall not be made by a Division of the Tribunal without the concurrence of the presidential member presiding.

(2.) Jurisdiction is conferred on the Court to hear and determine a question of law referred to it under this section.

(3.) Where a question of law arising in any proceedings has been referred to the Court under this section, the Tribunal shall not, in those proceedings—

- (a) make a determination or order to which the question is relevant while the reference is pending; or
(b) proceed in a manner, or make a determination or order, that is inconsistent with the opinion of the Court on the question.

(4.) A reference in this section to a question of law does not include a reference to a question whether there is sufficient evidence to justify a finding of fact by the Tribunal.

PART VII.—RESALE PRICE MAINTENANCE.

Division 1.—The Unlawful Practice of Resale Price Maintenance.

66.—(1.) It is unlawful for a corporation or other person to engage in the practice of resale price maintenance as mentioned in the succeeding provisions of this section.

Resale price maintenance an unlawful practice.

(2.) Subject to this Part, a corporation (in this section called “the supplier”) engages in the practice of resale price maintenance if that corporation does an act referred to in any of the paragraphs of sub-section (4.) of this section.

(3.) Subject to this Part, a person (not being a corporation and also in this section called “the supplier”) engages in the practice of resale price maintenance if that person does an act referred to in any of the paragraphs of the next succeeding sub-section where the second person mentioned in that paragraph is a corporation.

(4.) The acts referred to in the last two preceding sub-sections are the following:—

- (a) the supplier making it known to a second person that the supplier will not supply goods to the second person unless the second person agrees to sell those goods at a price not less than a price specified by the supplier;
- (b) the supplier inducing, or attempting to induce, a second person not to sell, at a price less than a price specified by the supplier, goods supplied to the second person by the supplier;
- (c) the supplier entering into an agreement, or offering to enter into an agreement, for the supply of goods to a second person, being an agreement one of the terms of which is, or would be, that the second person will not sell the goods at a price less than a price specified, or that would be specified, by the supplier;
- (d) the supplier withholding the supply of goods to a second person for the reason that the second person—
 - (i) has not agreed as mentioned in paragraph (a) of this sub-section; or
 - (ii) has sold, or is likely to sell, goods supplied to him by the supplier, or goods supplied to him by a third person who, directly or indirectly, has obtained the goods from the supplier, at a price less than a price specified by the supplier as the price below which the goods are not to be sold;
- (e) the supplier withholding the supply of goods to a second person for the reason that a third person who, directly or indirectly, has obtained, or wishes to obtain, goods from the second person—
 - (i) has not agreed to sell those goods at a price not less than a price specified by the supplier; or

- (ii) has sold, or is likely to sell, goods supplied to him, or to be supplied to him, by the second person, at a price less than a price specified by the supplier as the price below which the goods are not to be sold; and
 - (f) the supplier using, in relation to any goods supplied, or that may be supplied, by the supplier to a second person, a statement of a price that is likely to be understood by that person as the price below which the goods are not to be sold.
- (5.) For the purposes of the last preceding sub-section, where—
- (a) a price is specified by another person on behalf of the supplier, it shall be deemed to have been specified by the supplier;
 - (b) the supplier makes it known, in respect of goods, that the price below which those goods are not to be sold is a price specified by another person in respect of those goods, or in respect of goods of a like description, that price shall be deemed to have been specified, in respect of the first-mentioned goods, by the supplier;
 - (c) a formula is specified by or on behalf of the supplier and a price may be ascertained by calculation from, or by reference to, that formula, that price shall be deemed to have been specified by the supplier; and
 - (d) the supplier makes it known, in respect of goods, that the price below which those goods are not to be sold is a price ascertained by calculation from, or by reference to, a formula specified by another person in respect of those goods, or in respect of goods of a like description, that price shall be deemed to have been specified, in respect of the first-mentioned goods, by the supplier.
- (6.) In the last preceding sub-section, “ formula ” includes a set form or method.
- (7.) For the purposes of sub-section (4.) of this section, anything done by a person acting on behalf of, or by arrangement with, the supplier shall be deemed to have been done by the supplier.
- (8.) This section does not apply in respect of a practice that is specifically authorized or approved by an Act, a State Act or an Ordinance of a Territory or by regulations under such an Act or Ordinance.

Recommended
prices.

67. For the purposes of paragraph (b) of sub-section (4.) of the last preceding section, the supplier is not to be taken as inducing, or attempting to induce, a second person as mentioned in that paragraph in relation to any goods by reason only of his having given notification in writing to the second person of the price that he recommends as appropriate for the sale of those goods, provided that there is included in the

notification, and in each writing that refers, whether expressly or by implication, to the notification, a statement to the following effect:—

“ The price set out or referred to herein is a recommended price only and there is no obligation to comply with the recommendation.”

68.—(1.) For the purposes of paragraph (d) or (e) of sub-section (4.) of section 66 of this Act, the supplier shall be deemed to withhold the supply of goods to another person if—

Withholding the supply of goods.

- (a) the supplier refuses or fails to supply those goods to, or as requested by, the other person;
- (b) the supplier refuses to supply those goods except on terms that are disadvantageous to the other person;
- (c) in supplying goods to the other person, the supplier treats that person less favourably, whether in respect of time, method or place of delivery or otherwise, than the supplier treats other persons to whom the supplier supplies the same or similar goods; or
- (d) the supplier causes or procures a person to withhold the supply of goods to the other person as mentioned in any of the last three preceding paragraphs.

(2.) Paragraph (d) of sub-section (4.) of section 66 of this Act does not apply in relation to the withholding by the supplier of the supply of goods to another person who, within the preceding year, has sold goods obtained, directly or indirectly, from the supplier at less than their cost to that other person—

- (a) for the purpose of attracting to the establishment at which the goods were sold persons likely to purchase other goods; or
- (b) otherwise for the purpose of promoting the business of that other person.

(3.) For the purposes of the last preceding sub-section, there shall be disregarded—

- (a) a sale of goods that took place before the commencement of this Act;
- (b) a genuine seasonal or clearance sale of goods that were not acquired for the purpose of being sold at that sale; or
- (c) a sale of goods that took place with the consent of the supplier.

69.—(1.) For the purposes of paragraph (f) of sub-section (4.) of section 66 of this Act, if—

Statements as to the minimum price of goods.

- (a) a statement is applied to goods, whether by being woven in, impressed on, worked into or annexed or affixed to the goods or otherwise;
- (b) a statement is applied to a covering, label, reel or thing in or with which goods are supplied; or

- (c) a statement is used in a sign, advertisement, invoice, catalogue, business letter, business paper, price list or other document or otherwise in a manner likely to lead to the belief that it refers to goods,

the statement shall be deemed to have been used in relation to those goods.

(2.) For the purposes of the last preceding sub-section, "covering" includes a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and "label" includes a band or ticket.

(3.) Paragraph (f) of sub-section (4.) of section 66 of this Act does not apply where a statement of a price was applied to goods as mentioned in paragraph (a) or (b) of sub-section (1.) of this section if the statement was so applied before the ninth day of August, One thousand nine hundred and seventy-one, and the goods were or are supplied within the period of twelve months commencing on that date.

Criminal proceedings not to be brought.

70. Criminal proceedings do not lie against a person by reason only that he—

- (a) has engaged in, or has attempted to engage in, the practice of resale price maintenance;
- (b) has aided, abetted, counselled or procured a person to engage in that practice;
- (c) was in any way directly or indirectly knowingly concerned in, or party to, the engagement by a person in that practice; or
- (d) conspired with others to engage in that practice.

Agreements providing for resale price maintenance unenforceable.

71. Where the practice of resale price maintenance is provided for by an agreement, the agreement is unenforceable as regards engaging in the practice.

Division 2.—Exemptions.

Applications for exemptions.

72.—(1.) A person may apply to the Tribunal for a determination exempting from the application of this Part the goods described in the application, being goods that he supplies or is intending to supply otherwise than by way of sale by retail.

(2.) The application shall be as prescribed and shall be filed with the Registrar.

(3.) The prescribed fee shall be paid to the Registrar upon the filing of the application and if the fee is not paid the application shall be deemed not to have been filed.

(4.) The applicant shall serve a copy of the application on the Commissioner, who shall be taken to be a party to the proceedings.

(5.) As soon as practicable after an application has been filed with the Registrar, the Registrar shall cause notice of the application to be published in the *Gazette* and may also cause the notice to be published in such newspapers (if any) as he thinks fit.

(6.) The notice shall include the name of the applicant and a description of the goods to which the application relates.

(7.) The applicant may, by leave of the Tribunal, amend the application and, where leave is so granted, shall serve a copy of the application as amended on the Commissioner.

(8.) Where an application is amended, the Registrar shall cause notice of the amended application to be advertised as provided by sub-sections (5.) and (6.) of this section.

73. The Tribunal may, on application by the Commissioner, direct an applicant to amend his application—

Directions to amend.

- (a) so as to describe more appropriately the goods in respect of which the application is made; or
- (b) so as to exclude certain goods from the application for the reason that the Tribunal cannot otherwise deal satisfactorily with the application.

74.—(1.) The Tribunal shall, after making such inquiry as it thinks fit—

Determination of applications for exemption.

- (a) make a determination exempting all or any of the goods the subject of the application from the application of this Part; or
 - (b) make a determination dismissing the application.
- (2.) The Tribunal shall not make a determination exempting goods from the application of this Part unless the Tribunal is satisfied that, unless the exemption is granted—
- (a) the quality of the goods available for sale, or the varieties of the goods so available, would be substantially reduced to the detriment of the public as consumers or users of those goods;
 - (b) the number of establishments in which the goods are sold by retail would be substantially reduced to the detriment of the public as consumers or users of those goods;
 - (c) the prices at which the goods are sold by retail would ultimately be increased to the detriment of the public as consumers or users of those goods;
 - (d) the goods would be sold by retail under conditions likely to cause danger to the health of human beings or animals in consequence of their misuse; or
 - (e) any necessary services provided in connexion with or after the sale of the goods by retail would cease to be so provided or would be substantially reduced to the detriment of the public as consumers or users of those goods.

(3.) For the purposes of the last preceding sub-section, detriment to the public as consumers or users of goods shall not be taken into account unless it would outweigh any detriment to them as consumers or users of the goods, whether by the restriction of competition or otherwise, that would result if the determination were made.

(4.) The Tribunal may, if it thinks fit, make one determination in respect of two or more applications.

(5.) In this section—

“consumer” includes a person consuming for the purpose of, or in the course of, trade or business or for a public purpose and “user” has a corresponding meaning;

“necessary services”, in relation to goods, means services that, having regard to the character of the goods, are reasonably necessary to guard against the risk of injury in connexion with the consumption, installation or use of the goods or are otherwise reasonably necessary for the benefit of consumers or users.

Exemption extends to goods of others than applicant.

75. A determination under this Division has effect in respect of all the goods to which the determination relates and not merely in respect of goods of the applicant.

Division 3.—General.

Evidentiary provisions.

76.—(1.) Where, in proceedings under this Act by a person (in this section referred to as “the plaintiff”) against another person (in this section referred to as “the defendant”), it is claimed that the defendant has engaged in the practice of resale price maintenance and it is proved that—

- (a) the defendant has acted, in relation to the plaintiff, as mentioned in paragraph (a), (b), (c) or (d) of sub-section (1.) of section 68 of this Act;
- (b) during a period ending immediately before the time when the defendant so acted, the defendant had been supplying goods of the kind withheld to the plaintiff or to another person carrying on a business similar to that of the plaintiff; and
- (c) during the period of six months ending immediately before the time when the defendant so acted, the plaintiff, or a person who had obtained goods, directly or indirectly, from the plaintiff—
 - (i) to the knowledge of the defendant, did not, when requested to do so, enter into an agreement as mentioned in paragraph (a) of sub-section (4.) of section 66 of this Act;
 - (ii) to the knowledge of the defendant, sold, at a price less than a price specified by the defendant (or that, by virtue of sub-section (5.) of section 66 of this Act, is to be deemed to

have been so specified), goods supplied by the defendant or by a person who, directly or indirectly, had obtained those goods from the defendant; or

- (iii) had made known to the defendant his intention so to sell goods supplied as mentioned in the last preceding sub-paragraph,

then, subject to the next succeeding sub-section, it shall be presumed, unless the contrary is proved, that the defendant withheld the supply of the goods for the reason that the plaintiff, or a person who had obtained goods, directly or indirectly, from the plaintiff, had acted as mentioned in sub-paragraph (i) or (ii), as the case may be, of paragraph (d) or (e) of sub-section (4.) of section 66 of this Act.

(2.) The last preceding sub-section does not apply where the plaintiff proves the matter mentioned in paragraph (b) or (c) of sub-section (1.) of section 68 of this Act but the terms disadvantageous to the plaintiff, or the less favourable treatment of the plaintiff, consisted only of a requirement by the defendant as to the time at which, or the form in which, payment was to be made or as to the giving of security to secure payment.

(3.) In the application of this section in proceedings by the Attorney-General or the Commissioner for an injunction, references to the plaintiff shall be read as references to a person specified in the application for the injunction as the person in relation to whom the defendant is claimed to have acted as mentioned in paragraph (a) of sub-section (1.) of this section.

77. Section 58 of this Act and Division 3 of Part VI. apply in relation to this Part as they apply in relation to that Part.

Application of certain provisions.

PART VIII.—ENFORCEMENT OF ORDERS OF THE TRIBUNAL.

78. A person who—

- (a) contravenes or fails to comply with an order of the Tribunal under section 52, 54, 58 or 64 of this Act or an undertaking given to the Tribunal;
- (b) aids, abets, counsels or procures, or is in any way directly or indirectly knowingly concerned in, or party to—
- (i) a contravention of, or a failure to comply with, such an order or undertaking; or
- (ii) the doing of an act outside Australia that would, if done within Australia, be such a contravention; or
- (c) does an act or thing with the intention of evading or frustrating such an order or undertaking or causing or encouraging the evasion or frustration of such an order or undertaking,

Contravention of orders to be contempt of Tribunal.

is guilty of a contempt of the Tribunal.

Punishment of contempt.

79.—(1.) A contempt of the Tribunal referred to in the last preceding section is punishable by the Court as if it were a contempt of the Court and jurisdiction is conferred on the Court to hear and determine proceedings in respect of such a contempt.

(2.) Subject to this section, a proceeding in respect of such a contempt shall be instituted, carried on, heard and determined in accordance with the laws applicable to and in relation to the punishment of contempts of the Court.

(3.) In so far as any such law is incapable of application, the Court may give a direction as to the manner of instituting, carrying on, hearing or determining a proceeding referred to in the last preceding sub-section.

(4.) For the purposes of proceedings under this section, the Court shall be constituted by not less than three Judges.

(5.) Proceedings before the Court in accordance with this section shall not be instituted except with the consent in writing of the Attorney-General.

(6.) A reference in a law of the Commonwealth to an offence against a law of the Commonwealth shall be read as including a reference to a contempt referred to in this Part.

Protection of certain persons.

80. Where a person enters into, or purports to enter into, a transaction that involves a contravention by him of, or a failure by him to comply with, an order of, or an undertaking given to, the Tribunal or a provision of Part X., a person who is not bound by the order or undertaking, or was not guilty of an offence against Part X. in relation to the transaction, as the case may be, has the same rights and title, whether as a party to the transaction or as a person claiming directly or indirectly under a party to the transaction, as he would have had if the transaction had not involved such a contravention or failure.

PART IX.—PROVISIONS RELATING TO THE TRIBUNAL.

Division 1.—Procedure and Evidence.

Procedure generally.

81.—(1.) In proceedings before the Tribunal—

- (a) the procedure of the Tribunal is, subject to this Act and the regulations, within the discretion of the Tribunal;
- (b) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence.

(2.) The powers of the Tribunal with respect to matters of procedure in particular proceedings may be exercised by the Tribunal constituted by a presidential member.

82. The regulations may make provision—

- (a) for securing, by means of preliminary statements of facts and contentions, and by the production of documents, that all material facts and considerations are brought before the Tribunal by all parties to any proceedings before the Tribunal, including the Commissioner; and
- (b) with respect to the representation in any such proceedings of persons having a common interest in the proceedings.

Regulations as to certain matters.

83.—(1.) The Tribunal may take evidence on oath or affirmation and for that purpose a member may administer an oath or affirmation.

Power to take evidence on oath.

(2.) A member may summon a person to appear before the Tribunal to give evidence and to produce such documents (if any) as are referred to in the summons.

84.—(1.) Subject to this section, the hearing of proceedings before the Tribunal shall be in public.

Hearings to be in public except in special circumstances.

(2.) Where the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Tribunal may—

- (a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents filed or lodged with the Registrar, received in evidence by the Tribunal or placed in the records of the Tribunal.

(3.) The powers of the Tribunal under this section may be exercised by the Tribunal as constituted for the purposes of the hearing or by the Tribunal constituted by a presidential member.

85. The Tribunal may, if it thinks fit, permit a person appearing as a witness before the Tribunal to give evidence by tendering, and verifying by oath or affirmation, a written statement, which shall be filed with the Registrar.

Evidence in form of written statement.

86. The Tribunal as constituted for the purposes of any proceedings in which evidence may be taken may authorize a presidential member to take evidence for the purposes of the proceedings on its behalf, with such limitations (if any) as the Tribunal so constituted directs and, where such an authority is given—

Taking of evidence by single member.

- (a) that member may take evidence accordingly; and
- (b) for the purposes of this Act, that member shall, in relation to the taking of evidence in accordance with the authority, be deemed to constitute the Tribunal.

- Representation.** 87. In proceedings before the Tribunal—
- (a) a party or intervener other than a body corporate or a trade association may appear in person or may be represented by an employee of the party or intervener approved by the Tribunal;
 - (b) a party or intervener, being a body corporate other than a trade association, may be represented by an employee, or a director or other officer, of the party or intervener approved by the Tribunal;
 - (c) a party or intervener being a trade association or a member of a trade association may be represented by a member or officer of the trade association approved by the Tribunal; and
 - (d) any party or intervener may be represented by a barrister or a solicitor of the Supreme Court of a State or Territory of the Commonwealth or of the High Court.

Division 2.—General.

- Parties.** 88.—(1.) The regulations may make provision as to the parties to proceedings before the Tribunal.
- (2.) The Tribunal may, in any proceedings before the Tribunal, direct that a person shall be joined as a party or that a party be dismissed from the proceedings.
- (3.) The Tribunal may, upon such conditions as it thinks fit, permit a person to intervene in proceedings before the Tribunal.

- Ancillary orders, &c.** 89. The Tribunal has power—
- (a) to make an order incidental or ancillary to another order of the Tribunal;
 - (b) to make or vary a determination or order by consent of the parties affected, being a determination or order, or a variation of a determination or order, that the Tribunal is authorized to make in the proceedings concerned;
 - (c) to make a conditional determination or order; and
 - (d) to suspend an order.

- Undertakings to the Tribunal.** 90.—(1.) The Tribunal may receive an undertaking to the Tribunal by a party to proceedings before the Tribunal with respect to a matter appearing to the Tribunal to be relevant to the operation of this Act.
- (2.) The Tribunal may, with the consent of the Commissioner, adjourn indefinitely proceedings under Part VI., or may grant leave to the Commissioner to discontinue any such proceedings, upon the giving of appropriate undertakings by parties other than the Commissioner.

(3.) An undertaking to the Tribunal shall not, unless the contrary intention appears expressly from the terms of the undertaking, be construed as an admission that any restriction or practice is contrary to the public interest or as an admission as to any other matter.

(4.) The Tribunal shall record in writing an undertaking received or given for the purposes of this section and the writing shall be placed in the records of the Tribunal.

91.—(1.) A member of the Tribunal has, in the performance of his duty as a member, the same protection and immunity as a Justice of the High Court. Protection of members, barristers and witnesses.

(2.) A barrister, solicitor or other person appearing before the Tribunal on behalf of a party or intervener has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3.) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

92.—(1.) A person appearing as a witness before the Tribunal is not excused from answering a question, or producing a document, on the ground that the answer to the question, or the document, may tend to incriminate him. Incriminating answers.

(2.) Evidence given by a person before the Tribunal is not admissible against him in any criminal proceedings other than proceedings under this Act.

Division 3.—Offences in relation to the Tribunal.

93. A person served, as prescribed, with a summons to appear as a witness before the Tribunal shall not, without reasonable excuse— Failure of witness to attend.

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by a member.

Penalty: One thousand dollars or imprisonment for three months.

94. A person appearing as a witness before the Tribunal shall not, without reasonable excuse— Refusal to be sworn or to answer questions.

- (a) refuse or fail to be sworn or to make an affirmation;
- (b) refuse or fail to answer a question that he is required to answer by the member presiding at the proceedings; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under this Part served on him as prescribed.

Penalty: One thousand dollars or imprisonment for three months.

Contempt of
Tribunal, &c.

95. A person shall not—

- (a) insult or disturb a member of the Tribunal in the exercise of his powers or functions as a member;
- (b) interrupt the proceedings of the Tribunal;
- (c) use insulting language towards a member;
- (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Tribunal is sitting; or
- (e) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: One thousand dollars or imprisonment for three months.

PART X.—COLLUSIVE TENDERING AND COLLUSIVE BIDDING.

Collusive
tendering.

96.—(1.) In this section—

“ collusive tendering agreement ” means—

- (a) an agreement by two or more persons for the submission of identical tenders or a joint tender for the supply or acquisition of goods or services; or
- (b) any other agreement that has the purpose or effect of preventing or restricting competition among all or any of the parties in respect of tendering for the supply or acquisition of goods or services,

whether the agreement was made before, or is made after, the date of commencement of this Act and whether or not the agreement relates expressly or exclusively to tendering;

“ joint tender ” means a tender by two or more persons jointly for the supply or acquisition of goods or services, and includes a tender, whether made in the name of one person or in the names of two or more persons, made with the intention that, if the tender is successful, the supply or acquisition of the goods or services, or the goods or services acquired, as the case may be, will or may be shared by two or more persons.

(2.) A corporation that—

- (a) makes, or joins in the making of, a tender in accordance with a collusive tendering agreement; or
- (b) in pursuance of a collusive tendering agreement, abstains from making a tender,

is guilty of an offence against this section.

(3.) The last preceding sub-section does not apply unless the invitation to tender required tenders submitted to be in writing.

(4.) It is a defence to a prosecution under sub-section (2.) of this section if the defendant satisfies the court that—

- (a) the agreement concerned was not made for the purposes of a particular invitation to tender; and
- (b) at the time of the alleged offence—
 - (i) full and accurate particulars of the agreement, and of any variation of the agreement, were contained in the Register; and
 - (ii) there was not in force an order of the Tribunal that was contravened by the conduct constituting the alleged offence.

(5.) Sub-section (2.) of this section does not apply in relation to the making of, or abstaining from making, a tender for—

- (a) the supply of goods to a person carrying on business outside Australia where the successful tenderer is required to export the goods or where it is apparent from the terms or circumstances of the invitation to tender that the goods are to be exported for the purposes of that business; or
- (b) the supply of services outside Australia.

(6.) Sub-section (2.) of this section does not apply to the making, or the joining in the making of, a joint tender at the request of, or with the prior consent of, the person inviting tenders.

(7.) The penalty for an offence against this section is a fine not exceeding Ten thousand dollars.

97.—(1.) In this section—

“ auction ” means an auction in Australia at which any goods, land or other property, or any rights or privileges, is or are submitted to auction;

“ collusive bidding agreement ” means—

- (a) an agreement by two or more persons for the submission of a joint bid at an auction; or
- (b) any other agreement that has the purpose or effect of preventing or restricting competition among all or any of the parties to the agreement in respect of bidding at an auction or auctions,

whether the agreement was made before, or is made after, the commencement of this Act and whether or not the agreement relates expressly or exclusively to bidding;

“ joint bid ” means a bid made by two or more persons jointly and includes a bid, whether made in the name of one person or in the names of two or more persons, made with the intention that, if the bid is successful, the property, rights or privileges bid for will or may be shared by two or more persons.

Collusive
bidding.

(2.) A corporation that—

- (a) bids, or joins in the making of a bid, at an auction in accordance with a collusive bidding agreement; or
- (b) in pursuance of a collusive bidding agreement, abstains from attending an auction or from bidding, or making a further bid, at an auction,

is guilty of an offence against this section.

(3.) The last preceding sub-section does not apply to making, or joining in the making of, a joint bid at the request of, or with the prior consent of, the auctioneer.

(4.) It is a defence to a prosecution under sub-section (2.) of this section if the defendant satisfies the Court that—

- (a) the agreement concerned was not made for the purposes of a particular auction; and
- (b) at the time of the alleged offence—
 - (i) full and accurate particulars of the agreement and of any variation of the agreement were contained in the Register; and
 - (ii) there was not in force an order of the Tribunal that was contravened by the conduct constituting the alleged offence.

(5.) For the purposes of this section, an act done by an agent in accordance with, or in pursuance of, an agreement made by his principal, including an agreement made by the agent within the scope of his agency, shall be deemed to have been done by the principal and not by the agent.

(6.) The penalty for an offence against this section is a fine not exceeding Ten thousand dollars.

Exemptions.

98.—(1.) An agreement is not a collusive tendering agreement or collusive bidding agreement for the purposes of this Part to the extent that—

- (a) the agreement is between bodies corporate that are related to each other;
- (b) the agreement is between partners, in relation to the terms of the partnership or the conduct of the partnership business or in relation to competition between a partner and the partnership;
- (c) the agreement is between trustees, in relation to the conduct of a business carried on by them as trustees; or
- (d) the agreement relates to tendering or bidding otherwise than in the course of, or in connexion with, a business.

(2.) An agreement is not a collusive tendering agreement or collusive bidding agreement for the purposes of this Part to the extent that the agreement is, or is of a kind, specifically authorized or approved by, or by regulations under, an Act.

(3.) In relation to an invitation to submit tenders in a particular State or Territory or an auction held in a particular State or Territory, an agreement is not a collusive tendering agreement or collusive bidding agreement to the extent that the agreement is, or is of a kind, specifically authorized or approved by, or by regulations under, an Act of that State or an Ordinance of that Territory, as the case may be.

(4.) An agreement is not a collusive tendering agreement or a collusive bidding agreement for the purposes of this Part by reason only of a provision or condition referred to in any of paragraphs (c) to (h) (inclusive) of sub-section (5.) of section 35 of this Act or any act or thing done in pursuance of such a provision or condition.

PART XI.—CIVIL REMEDIES.

99.—(1.) A person who suffers loss or damage by an act of another person that—

Actions for damages.

(a) was done in contravention of an order of the Tribunal in proceedings under Part VI.;

(b) constitutes the practice of resale price maintenance; or

(c) was done in contravention of section 96 or 97 of this Act,

may recover the amount of the loss or damage by action against that other person.

(2.) In an action under this section in respect of an act in contravention of section 96 or 97 of this Act, the provisions of sub-section (4.) of section 96, or of sub-section (4.) of section 97, of this Act apply as if the reference to a prosecution were a reference to the action and as if the reference to the alleged offence were a reference to that act.

100. The court in which an action under this Part is instituted may, on the application of the Attorney-General, defer or adjourn the hearing of the action where the court is satisfied that it is in the interests of justice to do so having regard to any pending or possible prosecution or proceedings in respect of a contempt of the Tribunal or of a court.

Deferment of action on application of Attorney-General.

101. In proceedings against a person under this Part, a finding of any fact by the Court in proceedings under Part VIII. in which that person has been found guilty of a contempt of the Tribunal is evidence of that fact and the finding may be proved by production of a document under the seal of the Court from which the finding appears.

Findings in contempt proceedings to be evidence.

Injunctions.

102.—(1.) Where a person has engaged in the practice of resale price-maintenance, the Court may, on application by—

- (a) the Attorney-General;
- (b) the Commissioner; or
- (c) a person who has suffered loss or damage by reason of the first-mentioned person having engaged in that practice,

grant an injunction restraining the first-mentioned person from engaging in the practice of resale price maintenance in respect of such goods as are specified in the order.

(2.) The Court may rescind or vary an order made under the last preceding sub-section.

(3.) Proceedings for contempt of court in respect of an injunction granted under this section may be brought by a person referred to in any of the paragraphs of sub-section (1.) of this section.

Jurisdiction of Court.

103. Jurisdiction is conferred on the Court to hear and determine actions and other proceedings under this Part and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

PART XII.—OVERSEAS CARGO SHIPPING.

Division 1.—Preliminary.

Definitions.

104. In this Part, unless the contrary intention appears—

“ Australian flag shipping operator ” means—

- (a) for the purposes of the making of an order under section 117 of this Act—a person who carries on, or proposes to carry on, operations by way of overseas cargo shipping between ports between which any of the outwards cargo shipping to which the relevant conference agreement relates is carried on; or
- (b) for the purposes of the making of an order under section 123 of this Act—a person who carries on, or proposes to carry on, operations by way of overseas cargo shipping between Australia and the port or ports to be specified in the order,

being a person who normally uses, or proposes normally to use, for the purposes of those operations, a ship or ships registered in Australia and no other ship, and being an Australian citizen or a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;

- “conference agreement” means an agreement to which this Part applies;
- “declared shipowner” means a shipowner in respect of whom an order under section 123 of this Act is in force;
- “disapproved agreement” means a conference agreement in respect of which an order of disapproval under this Part is in force;
- “outwards cargo shipping” means overseas cargo shipping commencing at a place in Australia;
- “overseas cargo shipping” means the carriage of goods wholly or partly by sea from a place in Australia to a place outside Australia or from a place outside Australia to a place in Australia;
- “shipowner” means a person who carries on the business of outwards cargo shipping, whether alone or in partnership with another person or other persons, and includes such a person irrespective of nationality or place of incorporation, residence or business;
- “shipper body” means an association that, in the opinion of the Minister, represents the interests, in relation to outwards cargo shipping, of persons who are shippers of goods, or producers of goods of a kind exported from Australia;
- “the Clerk” means the Clerk of Shipping Agreements appointed under this Part.

105.—(1.) The restrictions referred to in section 35 of this Act do not include restrictions in respect of overseas cargo shipping accepted by a shipowner under a conference agreement, including a disapproved agreement.

Part to be exclusive of certain sections.

(2.) The practices referred to in sections 36 and 37 of this Act do not include practices in respect of overseas cargo shipping engaged in by a shipowner in pursuance of a conference agreement, including a disapproved agreement.

106. Part X. does not apply in relation to tendering or bidding in respect of the supply of services by way of overseas cargo shipping.

Part to be exclusive of Part X.

107.—(1.) Subject to this section, an agreement is an agreement to which this Part applies if the agreement, whether as originally made or by reason of a subsequent variation, is one the parties to which are or include two or more persons carrying on two or more businesses that include outwards cargo shipping and is one that makes provision, in relation to outwards cargo shipping, having the purpose or effect of restricting, preventing or hindering—

Agreements to which Part applies.

- (a) competition between any of the parties to the agreement; or

(b) competition between persons other than those parties and those parties or any of them,

including provision for—

- (c) the fixing or regulation of freight rates;
- (d) the giving to shippers, or the withholding from shippers, of special rates or other special privileges or advantages;
- (e) the pooling or apportioning of earnings, losses or traffic;
- (f) the allocation of ports or the restriction or other regulation of the number and character of sailings between ports; or
- (g) the restriction or other regulation of the volume or character of goods to be carried.

(2.) An agreement is not an agreement to which this Part applies by reason only of any provision as between shipowners of the one part and shippers of the other part with respect to the terms and conditions that are to be applicable to contracts for outwards cargo shipping.

Shipowners may be required to be represented by agent and give address for service.

108.—(1.) The Minister may, by notice in writing to a shipowner served as prescribed, request the shipowner to comply with the provisions of this section, and, where such a request has been made, the provisions of sub-sections (2.) to (7.) of this section apply.

(2.) The shipowner (not being a natural person resident in Australia) shall, at all times after the expiration of fourteen days from the date of service of the notice, be represented for the purposes of this Part by a person (not being a body corporate) resident in Australia and appointed by the shipowner as the agent of the shipowner for the purposes of this Part.

(3.) The appointment shall not be deemed to be duly made or revoked until the shipowner has given notice in writing of the appointment or revocation to the Minister, specifying the name, and, in the case of an appointment, the place of residence, of the agent.

(4.) Everything done by the agent in his representative capacity shall, for the purposes of this Part, be deemed to have been done by the shipowner, but not so as to affect any liability of the agent under this Part.

(5.) The shipowner shall, at all times after the expiration of fourteen days from the date of service of the notice, have an address in Australia for service for the purposes of this Part.

(6.) The address does not become the address for service of the shipowner until the shipowner has given notice in writing of the address to the Minister and an address so notified continues to be the address for service of the shipowner until another address has been so notified.

(7.) A document or notice required or permitted to be served on, or given to, the shipowner under or for the purposes of this Part, including

process of the Court, may, notwithstanding any other law, be served or given by leaving it at his address for service or by serving it by registered post on the shipowner at that address.

(8.) Where a shipowner has given notice in writing to the Minister of the appointment of an agent of the shipowner, or of an address in Australia of the shipowner for service, for the purposes of this Part, the notice shall, for the purposes of sub-section (4.) or (7.) of this section, as the case requires, be deemed to have been given in accordance with a request made by the Minister in pursuance of sub-section (1.) of this section.

(9.) Failure to comply with this section is not an offence but entails the consequences specified in this Part.

Division 2.—Filing of Conference Agreements.

109.—(1.) There shall be a Clerk of Shipping Agreements, who shall be appointed by the Governor-General.

Clerk of
Shipping
Agreements.

(2.) The Clerk, and any staff necessary to assist him, shall be persons employed under the *Public Service Act 1922–1968*.

110.—(1.) An agreement made before the date of commencement of this Act that is, on that date, an agreement to which this Part applies becomes subject to filing on that date.

Agreements
subject to
filing.

(2.) An agreement made on or after that date that is, when made, an agreement to which this Part applies becomes subject to filing upon the making of the agreement.

(3.) An agreement to which this Part applies, whether made before or after that date, that becomes subject to filing at a time after the making of the agreement, being a time after the commencement of this Act, becomes subject to filing at that time.

111.—(1.) Where a conference agreement has become subject to filing, particulars of the agreement, in accordance with this section and verified as required by this section, shall be furnished to the Clerk within the period of thirty days after the date on which the agreement became subject to filing.

Particulars to
be furnished
of certain
agreements,
variations and
determinations.

(2.) In the case of a conference agreement that becomes subject to filing on a date after the date of making of the agreement, the particulars required to be furnished are particulars of the agreement as varied, whether in respect of the parties or in respect of the terms, by any variations made on or before the date on which the agreement becomes subject to filing.

(3.) The duty to furnish particulars under this section in respect of a conference agreement that has become subject to filing is not affected by any subsequent variation or determination of the agreement and if, at any time after a conference agreement becomes subject to filing, the agreement is varied, whether in respect of the parties or in respect of the terms, or is determined otherwise than by effluxion of time, then, except as otherwise prescribed, particulars of the variation or determination, verified as required by this section, shall be furnished to the Clerk within the period of thirty days after the day on which the variation or determination occurs.

(4.) The requirements of this section may be complied with—

- (a) in respect of an agreement—by any party to the agreement; or
- (b) in respect of a variation or determination of an agreement—by any person who was a party to the agreement immediately before, or is a party immediately after, the variation or determination.

(5.) Subject to the regulations, the particulars to be furnished of an agreement are—

- (a) the names of the parties to the agreement and the date of the agreement; and
- (b) the whole of the terms of the agreement, whether or not relating to overseas cargo shipping.

(6.) The particulars to be furnished of an agreement, or of a variation or determination of an agreement, shall be furnished—

- (a) in so far as the particulars are contained in an instrument in writing by which the agreement, variation or determination was, in whole or in part, made or effected—by lodging with the Clerk a true copy of that instrument; and
- (b) in so far as the particulars are not contained in such an instrument, whether or not there is such an instrument—by lodging with the Clerk a memorandum of those particulars,

verified as a true copy or a full and correct memorandum, as the case requires, by statutory declaration of the person by whom the particulars are furnished or of a competent person authorized by that person.

(7.) The regulations may provide for excluding any particulars from the particulars required to be furnished under this Division.

(8.) A person referred to in sub-section (4.) of this section may, before the expiration of the time within which, but for this sub-section, the particulars are required to be furnished, apply in writing to the Minister for an extension of that time and, where such an application is made, the time within which the particulars are required to be furnished shall be taken not to expire—

- (a) whether or not the application is granted—before the expiration of fourteen days after the date on which the Minister informs the applicant in writing of his decision on the application; or

- (b) if the application is granted—before the expiration of the period of the extension granted by the Minister.

112.—(1.) If the requirements of the last preceding section are not complied with in respect of an agreement, each person who was a party to the agreement when it became subject to filing is guilty of an offence. Failure to furnish particulars an offence.

(2.) If the requirements of the last preceding section are not complied with in respect of a variation or determination of an agreement, each person who was a party to the agreement immediately before, or immediately after, the variation or determination is guilty of an offence.

(3.) The penalty for an offence against this section is a fine not exceeding Two thousand dollars.

(4.) It is a defence to a prosecution for an offence against this section if the person charged satisfies the Court that—

- (a) he did not, within the time allowed for the furnishing of the particulars, advert to the question whether particulars of the agreement, variation or determination were required by this Act to be furnished to the Clerk and his failure to advert to that question was not attributable to a desire to avoid, or to indifference to, his obligations;
- (b) he reasonably relied on another party to ensure that the required particulars were duly furnished; or
- (c) he believed in good faith that particulars of the agreement, variation or determination furnished to the Clerk by him within the time allowed complied with the requirements of this Act,

and that either the particulars, or the necessary further or amended particulars, were duly furnished, except as regards time, by himself or another party before the institution of the prosecution or he did not know or suspect, before the institution of the prosecution, that there had been default in compliance with the requirements of this Act with respect to the furnishing to the Clerk of particulars of the agreement, variation or determination.

113.—(1.) Where particulars of an agreement, or of a variation or determination of an agreement, are duly furnished to the Clerk in accordance with this Division, or where those particulars are duly furnished except that the time allowed for furnishing the particulars has expired, the Clerk shall file the document containing the particulars in a repository of such documents to be kept by him. Clerk to file particulars.

(2.) The Clerk shall keep such records and indexes of documents received by him under this Division as he thinks necessary or as the Minister directs.

Filed
documents to
be evidence.

114. In proceedings under this Act before the Tribunal or the Court, other than proceedings for an offence against a provision of this Division, particulars of an agreement, or of a variation or determination of an agreement, as appearing from a document filed by the Clerk are evidence of the agreement, variation or determination.

Secrecy.

115.—(1.) This section applies to every person who is or has been the Clerk or a member of the staff assisting the Clerk.

(2.) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connexion with this Part—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his office or employment under or for the purposes of this Part; or
- (b) produce to any person a document furnished in pursuance of this Division.

Penalty: One thousand dollars or imprisonment for three months.

(3.) A person to whom this section applies shall not be required to produce in a court any document relating to the affairs of another person of which he has the custody, or to which he has access, by virtue of his office or employment under or for the purposes of this Part, or to divulge or communicate to any court any information concerning the affairs of another person obtained by him by reason of any such office or employment, unless it is necessary to do so for the purposes of, or of a prosecution under or arising out of, this Part.

(4.) This section does not apply in relation to—

- (a) the communication of information to, or the production of a document to, the Tribunal for the purposes of an inquiry under this Part, the Minister or an officer acting on behalf of, and with the authority of, the Minister; or
- (b) the communication or production to a person of, or of information or documents concerning, particulars furnished to the Clerk of an agreement to which, according to those particulars, that person is or has been a party.

(5.) For the purposes of paragraph (b) of the last preceding subsection, the communication or production of any matter or document to a person authorized by writing under the common seal of a body corporate to represent the body corporate for the purposes of this section shall be deemed to be communication or production to that body corporate.

(6.) In this section—

- “ court ” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;
- “ produce ” includes permit access to and “ production ” has a corresponding meaning.

Division 3.—Powers in relation to Conference Agreements.

116.—(1.) The Minister may serve on each of the parties to a conference agreement who carry on outwards cargo shipping to which the agreement relates a notice in accordance with this section. Minister may request undertakings.

(2.) A notice to a party under the last preceding sub-section shall request the party to give to the Minister, not later than a date specified in the notice, an undertaking in writing executed by the party that, whenever the party is reasonably requested by the relevant shipper body, by notice in writing, to take part in negotiations with that shipper body with regard to arrangements for, and the terms and conditions that are to be applicable to, outwards cargo shipping to which the conference agreement relates—

- (a) the party will take part in those negotiations and will have due regard to matters and considerations raised, and representations made, by the relevant shipper body in the course of the negotiations;
- (b) the party will cause an officer designated from time to time by the Minister to be furnished with such information as the officer requires concerning the progress of the negotiations, will permit that officer to be present at any meetings in the course of the negotiations and will give consideration to any suggestions that he may make; and
- (c) if the relevant shipper body requests the party to make available for the purposes of the negotiations any information that is reasonably necessary for those purposes and itself makes available for those purposes any such information that the parties or any of them request to be made available, the party will make available the information requested by the shipper body.

(3.) An undertaking for the purposes of this section shall be deemed to be duly given notwithstanding that it contains qualifications or exceptions if they were permitted by the notice requesting the undertaking or have been accepted by the Minister by notice in writing to the party.

(4.) A person on whom a notice has been served under sub-section (1.) of this section may, before the date specified in the notice, apply in writing to the Minister for an extension of the time for compliance with the notice and, where such an application is made, the time within which the notice is to be complied with shall be taken not to expire—

- (a) whether or not the application is granted—before the expiration of fourteen days after the date on which the Minister informs the applicant in writing of his decision on the application; or
- (b) if the application is granted—before the expiration of the period of the extension granted by the Minister.

(5.) In this section, “ the relevant shipper body ” means the shipper body designated by the Minister in the notice requesting the undertaking, being a shipper body that, in the opinion of the Minister, is appropriately constituted having regard to the overseas cargo shipping to which the agreement applies.

Disapproval of agreements.

117.—(1.) The Governor-General may, by order, disapprove a conference agreement, whether or not particulars of the agreement have been furnished to the Clerk, on a ground specified in the order, being one of the following grounds:—

- (a) that a party to the agreement has, without reasonable excuse, failed to comply with section 108 of this Act;
- (b) that there has been a failure to comply with a request for the giving of an undertaking made by the Minister under the last preceding section in relation to the agreement;
- (c) that the Governor-General is satisfied, after consideration of a report to the Minister by the Tribunal, that—
 - (i) there has been a failure to comply with an undertaking given under the last preceding section in relation to the agreement;
 - (ii) the agreement, or the manner in which it is being interpreted or applied by the parties, or the conduct of, or the provision of facilities by, the parties in relation to outwards cargo shipping to which the agreement relates does not have due regard to the need for services by way of overseas cargo shipping to be efficient, economical and adequate; or
 - (iii) the agreement, or the manner in which it is being interpreted or applied by the parties, or the conduct of the parties in relation to matters to which the agreement relates, is preventing a person from, or hindering a person in, engaging efficiently, to an extent that is reasonable, in overseas cargo shipping in relation to which he is an Australian flag shipping operator.

(2.) For the purposes of sub-paragraph (ii) of paragraph (c) of the last preceding sub-section, consideration shall be given to the need to ensure the continuing provision of services by way of overseas cargo shipping and, in that connexion, the conditions under which, on a long term view, shipowners may reasonably be expected to provide such services.

Effect of disapproval.

118.—(1.) Where an agreement is disapproved under this Division, the agreement becomes, upon the date on which the order of disapproval takes effect, unenforceable as regards observance of the agreement, so far as it relates to outwards cargo shipping, on and after that date, but a

transaction entered into, whether before or after the order takes effect, in pursuance of the agreement is not illegal or unenforceable by reason only of the making of the order.

(2.) A party to a disapproved agreement shall not—

- (a) do any act or thing in pursuance of, or enforce or purport to enforce, the agreement (including the agreement as varied by any later agreement) so far as it relates to outwards cargo shipping;
- (b) enter into any other conference agreement (whether with the same parties or with other parties) that relates, in whole or in part, to the carriage of goods from Australia to a place outside Australia that is a place to the carriage of goods to which the disapproved agreement related; or
- (c) do any act or thing in pursuance of, or enforce or purport to enforce, an agreement referred to in the last preceding paragraph.

Penalty: Fifty thousand dollars.

119.—(1.) Where, in his discretion, he considers it desirable to do so, the Governor-General may—

- (a) by order, revoke an order disapproving a conference agreement; or
- (b) approve the entering into by one or more of the parties to a disapproved agreement of another conference agreement, whether with or without parties who were not parties to the disapproved agreement.

Reinstatement of disapproved agreement or approval of substituted agreement.

(2.) Paragraphs (b) and (c) of sub-section (2.) of the last preceding section do not apply in relation to a conference agreement in respect of which an approval has been given under this section and which has not been disapproved under this Division.

120. The Court is empowered, on the application of the Minister, to grant an injunction restraining a person who has been convicted of an offence against section 118 of this Act from further contravening that section.

Injunctions.

121. An order under this Division—

- (a) shall be published in the *Gazette*; and
- (b) takes effect on the date of publication or on such later date as is fixed by the order.

Publication and commencement of orders.

Division 4.—Powers in relation to Individual Shipowners.

Minister may
request
undertakings.

122.—(1.) Subject to the next succeeding sub-section, the Minister may serve on a shipowner a notice requesting the shipowner to give to the Minister, not later than a date specified in the notice, an undertaking in writing executed by the shipowner that, whenever the shipowner is reasonably requested by the relevant shipper body, by notice in writing, to take part in negotiations with that shipper body with regard to arrangements for, and the terms and conditions that are to be applicable to, outwards cargo shipping to which the notice relates—

- (a) the shipowner will take part in those negotiations and will have due regard to matters and considerations raised, and representations made, by the relevant shipper body in the course of the negotiations;
- (b) the shipowner will cause an officer designated from time to time by the Minister to be furnished with such information as the officer requires concerning the progress of the negotiations, will permit that officer to be present at any meetings in the course of the negotiations and will give consideration to any suggestions that he may make; and
- (c) if the relevant shipper body requests the shipowner to make available for the purposes of the negotiations any information that is reasonably necessary for those purposes and itself makes available for those purposes any such information that the shipowner requests to be made available, the shipowner will make available the information requested by the shipper body.

(2.) A notice under the last preceding sub-section requesting an undertaking shall be expressed to relate to outwards cargo shipping by the shipowner to a specified port or to specified ports, not being outwards cargo shipping that is within the operation of a conference agreement, not being a disapproved agreement, particulars of which have been furnished under Division 2 of this Part.

(3.) An undertaking for the purposes of this section shall be deemed to be duly given notwithstanding that it contains qualifications or exceptions if they were permitted by the notice requesting the undertaking or have been accepted by the Minister by notice in writing to the shipowner.

(4.) A shipowner on whom a notice has been served under sub-section (1.) of this section may, before the date specified in the notice, apply in writing to the Minister for an extension of the time for compliance with the notice and, where such an application is made, the time within which the notice is to be complied with shall be taken not to expire—

- (a) whether or not the application is granted—before the expiration of fourteen days after the date on which the Minister informs the applicant in writing of his decision on the application; or

- (b) if the application is granted—before the expiration of the period of the extension granted by the Minister.

(5.) In this section, “the relevant shipper body” means the shipper body designated by the Minister in the notice requesting the undertaking, being a shipper body that, in the opinion of the Minister, is appropriately constituted having regard to the overseas cargo shipping to which the notice relates.

123.—(1.) Subject to this section, the Governor-General may, by order, declare a shipowner to be, in relation to outwards cargo shipping to a port or the ports specified in the order (in this section referred to as “the relevant shipping”), a shipowner to whom the next succeeding section applies. Declaration of shipowners.

(2.) The Governor-General shall not make such an order except on a ground specified in the order, being one of the following grounds:—

- (a) that the shipowner has, without reasonable excuse, failed to comply with section 108 of this Act;
- (b) that the shipowner has failed to comply with a request for the giving of an undertaking made by the Minister under the last preceding section in relation to the relevant shipping;
- (c) that the Governor-General is satisfied, after consideration of a report to the Minister by the Tribunal, that—
- (i) the shipowner has failed to comply with an undertaking given under the last preceding section in relation to the relevant shipping;
 - (ii) the conduct of, or provision of facilities by, the shipowner in relation to the relevant shipping does not have due regard to the need for services by way of overseas cargo shipping to be efficient, economical and adequate;
 - (iii) the conduct of the shipowner in relation to overseas cargo shipping between Australia and a port or the ports to be specified in the order is preventing a person from, or hindering a person in, engaging efficiently, to an extent that is reasonable, in overseas cargo shipping in relation to which he is an Australian flag shipping operator; or
 - (iv) a conference agreement to which the shipowner was a party, being an agreement that related in whole or in part to the relevant shipping, has been disapproved under this Part and the disapproval has not been revoked.

(3.) For the purposes of sub-paragraph (ii) of paragraph (c) of the last preceding sub-section, consideration shall be given to the need to ensure the continuing provision of services, by way of overseas cargo

shipping and, in that connexion, the conditions under which, on a long term view, shipowners may reasonably be expected to provide such services.

(4.) Where, in his discretion, he considers it desirable to do so, the Governor-General may, by order, revoke an order under sub-section (1.) of this section.

(5.) An order under this section—

(a) shall be published in the *Gazette*; and

(b) takes effect on the date of publication or on such later date as is fixed by the order.

Prohibitions
applicable to
declared
shipowner.

124. A declared shipowner shall not, in respect of outwards cargo shipping to a port specified in the order by virtue of which he is a declared shipowner—

(a) enter into a contract, or follow a practice, under which a shipper—

(i) is subject to restrictions with respect to, or is subject to any detriment by reason of or in the event of, his giving patronage to another shipowner; or

(ii) obtains or may obtain advantageous freight rates on condition that, or by reason that, he gives all or a part of his patronage to the shipowner, or to two or more particular shipowners;

(b) pay or allow, or make an agreement to pay or allow, to a shipper a deferred rebate, that is to say, a rebate of portion of any freight money upon fulfilment by the shipper of a condition with respect to confining patronage to the shipowner or to two or more particular shipowners;

(c) with the object of substantially damaging the business of another shipowner or preventing another shipowner from entering into competition with him, engage in freight-cutting, or use a vessel, whether alone or in conjunction with any other shipowner, to forestall the first-mentioned shipowner in the obtaining of cargoes; or

(d) retaliate, or threaten to retaliate, against a shipper for giving patronage to another shipowner—

(i) by refusing, or threatening to refuse, to carry goods of the shipper or to carry goods of the shipper otherwise than on terms disadvantageous to the shipper; or

(ii) by resorting to other discriminatory measures.

Penalty: Fifty thousand dollars.

125. The Court is empowered, on the application of the Minister, to grant an injunction restraining a person who has been convicted of an offence against the last preceding section from further contravening that section. Injunction.

Division 5.—General.

126.—(1.) The Minister may refer to the Tribunal for inquiry and report any matter relevant to the exercise of the power of the Governor-General to make an order upon a ground specified in paragraph (c) of sub-section (1.) of section 117 of this Act or paragraph (c) of sub-section (2.) of section 123 of this Act, and the Tribunal shall hold an inquiry, and make a report, accordingly. Minister may refer certain matters to Tribunal.

(2.) For the purposes of an inquiry under this section—

(a) the Tribunal shall, notwithstanding anything contained in section 16 of this Act but subject to section 21 of this Act, be constituted by a Division of the Tribunal consisting of a presidential member and two members who are not presidential members;

(b) section 21 of this Act applies as if the holding of the inquiry, and the making of a report on the inquiry, were the hearing and determining of proceedings; and

(c) sections 87, 88 and 90 of this Act do not apply.

127. The Minister shall not refer a matter to the Tribunal under the last preceding section unless he has first carried on, or endeavoured to carry on, either personally or through officers acting on his behalf and with his authority, consultations with the parties to the conference agreement concerned who carry on overseas cargo shipping, or with the shipowner concerned, as the case requires, with a view to securing such undertaking or action by those parties or by that shipowner as will render the proposed reference unnecessary. Minister to consult with shipowners before making reference.

128.—(1.) In an inquiry under this Division in respect of a matter arising under section 117 of this Act, any party to the conference agreement concerned is entitled to be represented. Representation.

(2.) In an inquiry under this Division in respect of a matter arising under section 123 of this Act, the shipowner concerned is entitled to be represented.

(3.) In an inquiry under this Division—

(a) the Minister is entitled to be represented;

(b) if the Tribunal is satisfied that a shipper body has a sufficient interest in the inquiry, the Tribunal shall grant to the shipper body leave to be represented; and

(c) the Tribunal may grant to any person appearing to it to have a sufficient interest in the inquiry leave to be represented.

(4.) The representation of a person or body in an inquiry under this Division shall be—

- (a) by a barrister or a solicitor of the Supreme Court of a State or Territory of the Commonwealth or of the High Court; or
- (b) by a person approved by the Tribunal.

Undertakings
to Tribunal.

129.—(1.) In connexion with an inquiry under this Division, the Tribunal may receive an undertaking to the Tribunal by a shipowner with respect to a matter appearing to the Tribunal to be relevant to the operation of this Part.

(2.) The Minister may withdraw a reference of a matter to the Tribunal under this Division upon the giving of an undertaking under the last preceding sub-section to the satisfaction of the Minister.

(3.) An undertaking to the Tribunal under this section shall not, unless the contrary intention appears expressly from the terms of the undertaking, be construed as an admission as to any matter.

(4.) The Tribunal shall record in writing an undertaking received or given for the purposes of this section and the writing shall be placed in the records of the Tribunal.

(5.) For the purposes of the application of section 79 of this Act in relation to a contempt of the Tribunal in connexion with an undertaking given in accordance with this section, the reference in that section to the Attorney-General shall be read as a reference to the Minister.

Publication of
reports of
Tribunal.

130.—(1.) Where the Tribunal has made a report to the Minister under this Division, the Minister shall—

- (a) upon the expiration of a period of sixty days after the date on which he received the report; or
- (b) if, before the expiration of that period, the Governor-General makes an order after consideration of the report, immediately after the making of the order,

direct the Registrar to make the report public.

(2.) After a direction has been given under the last preceding sub-section in respect of a report, a person may, on payment of the prescribed fee—

- (a) inspect a copy of the report at the office of the Registrar; or
- (b) obtain a copy of the report certified to be a true copy under the hand of the Registrar or of a Deputy Registrar.

(3.) Section 161 of this Act does not apply in relation to a report of the Tribunal under this Division.

Institution of
prosecutions.

131.—(1.) For the purpose of proceedings before the Court for an offence against this Part, the references in paragraph (b) of sub-section (5.) of section 164 of this Act to the Attorney-General shall be read as references to the Minister.

(2.) Proceedings before the Court in respect of a contempt of the Court in relation to an injunction under this Part shall not be instituted except with the consent in writing of the Minister.

132.—(1.) A person who aids, abets, counsels or procures, or is in any way directly or indirectly knowingly concerned in, or party to—

Aiding and abetting.

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

(b) the doing of an act or thing outside Australia that would, if done within Australia, be an offence against this Part,

shall be deemed to have committed the offence and is punishable accordingly.

(2.) The references in the last preceding sub-section to an offence against this Part shall be read as including references to a contempt of the Court in relation to an injunction under this Part.

133. Where a person enters into, or purports to enter into, a contract of carriage or other transaction that involves an offence by him against this Part or a breach by him of an injunction of the Court under this Part, a person who was not guilty of such an offence or breach in relation to the transaction has the same rights, whether as a party to the transaction or as a person claiming directly or indirectly under a party to the transaction, as he would have had if the contract or transaction had not involved such an offence or breach.

Protection of certain persons.

134.—(1.) The jurisdiction of the Court in proceedings for an injunction under this Part may be exercised by a single Judge.

Constitution of Court.

(2.) For the purposes of proceedings in respect of a contempt of the Court consisting of failure to comply with an injunction under this Part, the Court shall be constituted by not less than three Judges.

Division 6.—Civil Remedies in relation to Overseas Cargo Shipping.

135.—(1.) Subject to this section, a shipper, shipowner or other person who suffers loss or damage by an act of another person done in contravention of section 118 or section 124 of this Act may recover the amount of the loss or damage by action against that other person.

Actions for damages.

(2.) Jurisdiction is conferred on the Court to hear and determine actions under this section and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

136. The court in which an action under this Division is instituted may, on the application of the Minister, defer or adjourn the hearing of the action where it is satisfied that it is in the interests of justice to do so having regard to any pending or possible prosecution or proceedings for an injunction or for contempt of the Court arising out of disobedience to an injunction.

Deferment of action on application of Minister.

Findings in contempt proceedings to be evidence.

137. In proceedings against a person under this Division, a finding of a fact by the Court in proceedings under, or arising out of, this Part in which—

- (a) that person has been found guilty of an offence against a provision of Division 3 or of Division 4 of this Part;
- (b) an injunction has been granted against that person; or
- (c) that person has been found guilty of contempt of the Court,

is evidence of the fact and the finding may be proved by production of a document under the seal of the Court from which the finding appears.

PART XIII.—INTERPRETATIVE PROVISIONS.

Provisions relating to agreements.

138.—(1.) The following provisions of this section have effect for the purposes of this Act and of any order of the Tribunal.

(2.) An arrangement or understanding, whether formal or informal and whether express or implied, shall be deemed to be an agreement.

(3.) A reference to an agreement shall be read as including a reference to an agreement made outside Australia and to an agreement made before the commencement of this Act.

(4.) A reference to an agreement shall be read as including a reference to every relevant restriction accepted under the agreement.

(5.) A reference to an agreement shall be read as including a reference to an agreement that is not enforceable by legal proceedings, whether or not it was intended to be so enforceable.

(6.) A reference to restrictions under an agreement, or the doing of an act or thing under or in pursuance of an agreement, shall, in relation to an agreement that is not enforceable, be construed as if the agreement were enforceable.

(7.) Where a person is a party to an agreement under which that person undertakes, or is or may be required to ensure, that a body corporate which that person is in a position to control will do an act or thing, or which provides for the doing of an act or thing by such a body corporate—

- (a) that body corporate shall be deemed to be a party to the agreement; and
- (b) the agreement shall be deemed to require that body corporate to do that act or thing,

and, for the purposes of this sub-section, a body corporate that is the holding company of another body corporate shall be deemed to be in a position to control that other body corporate.

(8.) Where, under an agreement—

- (a) a party is subject to an obligation, or may be subjected to a penalty or disadvantage, if he fails to comply with conditions; or

- (b) privileges or benefits are, or are to be, conferred upon a party only if he complies with conditions,

that person shall be deemed to be required by that agreement to comply with those conditions.

(9.) Without affecting the operation of the last preceding sub-section, an obligation on the part of a party to an agreement to make payments calculated by reference to—

- (a) the quantity of any goods produced or supplied by him or the extent of any services supplied by him; or
 (b) the quantity of any materials acquired by him for the purpose of, or used by him in, the production of any goods or the supply of any services,

being payments calculated, or calculated at an increased rate, in respect of goods, services or materials in excess of a quantity or extent specified in, or ascertained in accordance with, the agreement, shall be deemed to be a restriction in respect of the quantities of those goods that he may produce or supply, or the extent of those services that he may supply, as the case may be.

(10.) An act or thing done by a party to an agreement shall be deemed to have been done in pursuance of a requirement of the agreement where—

- (a) the party would have contravened that requirement if he had not done that act or thing; or
 (b) that requirement was applicable in relation to the doing of that act or thing and the act or thing was done consistently with that requirement.

139.—(1.) In this Act, “trade association” means an association, body or organization, whether incorporated or not, formed, existing or conducted for the purpose of furthering, or for purposes that include or are conducive to the furthering of, the business or professional interests of all or any of its members, but does not include—

- (a) a partnership; or
 (b) an association, body or organization the only members of which are bodies corporate related to each other.

(2.) For the purposes of this Act—

- (a) where an association, body or organization, whether or not it is a trade association, or a person representing an association, body or organization, is a member of another association, body or organization, each member of the first-mentioned association, body or organization shall be deemed to be a member of the last-mentioned association, body or organization;
 (b) where a person is a member of an association, body or organization in the capacity of representative of another person, including a body corporate, that other person shall be deemed to be a member of that association, body or organization;

Special provisions relating to trade associations.

- (c) the constitution of a trade association shall be deemed to be an agreement to which all persons who for the time being are members of the trade association are parties;
- (d) where a direction by or on behalf of a trade association has been given to, or was intended to affect the conduct of, all or any of its members, it shall be conclusively presumed that the direction was authorized by the constitution of the trade association and that those members were required by that constitution to comply with it; and
- (e) an agreement made by a trade association shall be deemed to be an agreement to which all members of the trade association for the time being are parties and by which those members agree to do all acts and things that, under the agreement, are to be done by them or the trade association is to cause, require or recommend them to do.

References to restrictions.

140.—(1.) For the purposes of this Act, the general obligation of a party to an agreement to comply with a provision of that agreement under which that party is or could be required to observe restrictions with respect to a matter, whether particulars of the restrictions are contained or referred to in the agreement or are to be defined by some later act or document, is a restriction with respect to that matter accepted by that party under the agreement.

(2.) Notwithstanding the last preceding sub-section, a reference in this Act to a restriction under an agreement includes a reference to a particular obligation arising under a provision referred to in that sub-section.

Supply, acquisition and production.

141. In this Act—

- (a) a reference to the supply or acquisition of goods includes a reference to agreeing to supply or acquire goods;
- (b) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
- (c) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services;
- (d) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with services; and
- (e) a reference to the production of goods includes a reference to the getting of minerals and the taking of animals, including fish.

References to acts.

142. For the purposes of this Act—

- (a) refusing to do or refraining from doing an act or thing; or
- (b) entering into an agreement, refusing to enter into an agreement or refraining from entering into an agreement,

shall be deemed to be doing an act or thing.

143.—(1.) Where a provision of this Act refers to a body corporate being the holding company of another body corporate, the question whether that body corporate is the holding company of that other body corporate shall be determined in the same manner as the question whether a corporation is the holding company of another corporation is determined under the Companies Ordinance. Related companies.

(2.) Where a provision of this Act—

(a) refers to bodies corporate or corporations being related to each other; or

(b) refers to a body corporate and a corporation being related to each other,

the question whether those bodies corporate or corporations, or that body corporate and that corporation, are so related shall be determined in the same manner as the question whether two corporations are related to each other is determined under the Companies Ordinance.

(3.) In this section, “the Companies Ordinance” means the *Companies Ordinance* 1962–1969 of the Australian Capital Territory or, if that Ordinance is amended, that Ordinance as amended.

PART XIV.—TRANSITIONAL PROVISIONS.

144. Nothing in this Part affects the operation of section 8 of the *Acts Interpretation Act* 1901–1966 in relation to the Acts repealed by this Act. Saving of s. 8 of Acts Interpretation Act.

145.—(1.) A person named in an instrument of appointment to an office made or purporting to have been made under a provision of the *Trade Practices Act* 1965 or of that Act as amended, but not including a person who had ceased to hold his office before the commencement of this Act, shall be deemed to have been appointed to the corresponding office under this Act and holds office for the remainder of the period of his appointment under the *Trade Practices Act* 1965–1971. Continuation of certain appointments.

(2.) It is not necessary for a person referred to in this section to take an oath or make an affirmation as provided by section 15 or by section 30 of this Act.

(3.) Section 26 of this Act applies in relation to the person holding office immediately before the commencement of this Act as Commissioner of Trade Practices under the *Trade Practices Act* 1965–1971 as if he had been appointed under this Act and, in the application of paragraph (b) of that section in relation to that person, his service under the *Trade Practices Act* 1965 or under that Act as amended shall be taken into account as though it were service under this Act.

(4.) The reference in sub-section (4A.) of section 25 of the *Public Service Act* 1922–1968 to the Commissioner of Trade Practices shall be

read as a reference to the Commissioner of Trade Practices holding office under this Act and a reference in that sub-section to section thirty-one of the *Trade Practices Act 1965–1966* shall be read as a reference to section 31 of this Act.

Secrecy.

146. The application of section 34 of this Act extends to information and documents referred to in section 34 of the *Trade Practices Act 1965–1971*.

The Register of Trade Agreements continued.

147.—(1.) The Register kept under section 40 of the *Trade Practices Act 1965–1971* shall be deemed to be incorporated with and to form part of the Register kept under section 40 of this Act.

(2.) The last preceding sub-section does not apply to so much of the Register first referred to in that sub-section as consists of documents containing particulars that would not have been required to be furnished if this Act had been in force when they were furnished.

Commissioner may retain certain documents.

148.—(1.) Notwithstanding the repeal of the Acts referred to in sub-section (1.) of section 4 of this Act, the Commissioner may retain a document—

- (a) furnished under section 42 of the *Trade Practices Act 1965* or of that Act as amended; or
- (b) produced under section 103 of the *Trade Practices Act 1965* or of that Act as amended,

being a document—

- (c) that relates to a restriction or practice that was or is (whether exclusively or not) applicable to a transaction, act or operation of a kind referred to in any of the paragraphs of sub-section (1.) of section 7 of the *Trade Practices Act 1965–1971* or in sub-section (2.) or (3.) of that section; or
- (d) that relates to a restriction or practice referred to in paragraph (a) or (b) of sub-section (2.) of section 7A of the *Trade Practices Act 1965–1967*.

(2.) Notwithstanding the repeal referred to in the last preceding sub-section, the Commissioner may retain a copy of, or an extract from, a document made or taken under section 104 of the *Trade Practices Act 1965* or of that Act as amended, being a document referred to in paragraph (c) or (d) of that sub-section.

Certain particulars not required to be furnished.

149.—(1.) It is not necessary for particulars in respect of an agreement that have been furnished as required by section 42 of the *Trade Practices Act 1965* or of that Act as amended to be furnished as required by section 42 of this Act and this Act applies to and in relation to particulars so furnished, and to and in relation to the agreement in respect of which they were so furnished, as if the particulars had been furnished under section 42 of this Act.

(2.) The last preceding sub-section does not have effect so as to apply this Act to or in relation to particulars, or to or in relation to an agreement in respect of which particulars were furnished, if those particulars would not have been required to be furnished if this Act had been in force when they were furnished.

150.—(1.) An agreement, variation or determination registered under section 44 of the *Trade Practices Act 1965* or of that Act as amended shall be deemed to have been registered under section 44 of this Act.

Registration of agreements continued.

(2.) The last preceding sub-section does not apply to an agreement, variation or determination if the agreement, variation or determination would not have been subject to registration if this Act had been in force when the agreement, variation or determination was registered.

151. The undertaking of Tasmanian Breweries Pty. Limited received by the Trade Practices Tribunal under section 79 of the *Trade Practices Act 1965–1969* has effect as if it had been received by the Trade Practices Tribunal under sub-section (1.) of section 90 of this Act and had been recorded as provided by sub-section (4.) of that section.

Undertaking by Tasmanian Breweries Pty. Limited continued.

152. The determination made by the Trade Practices Tribunal on the twenty-seventh day of August, One thousand nine hundred and seventy-one, under section 49 of the *Trade Practices Act 1965–1971* in proceedings number 1 of 1970, being proceedings instituted by the Commissioner of Trade Practices on the eleventh day of December, One thousand nine hundred and seventy, under section 47 of that Act, and the order made in those proceedings by the Trade Practices Tribunal on the first-mentioned date under section 52 of the *Trade Practices Act 1965–1971*, have effect (except as they apply in relation to a person not being a corporation) as though they had been made under sections 49 and 52, respectively, of this Act.

Determination and order in certain proceedings continued.

153. The proceedings instituted by the Commissioner of Trade Practices under section 47 of the *Trade Practices Act 1965–1969* on the fourteenth day of May, One thousand nine hundred and seventy-one, being proceedings number 1 of 1971, have effect as if they had been instituted by the Commissioner of Trade Practices under section 47 of this Act on the date of commencement of this Act and everything done in relation to those proceedings before the commencement of this Act has effect as if it had been done under this Act or the regulations, as the case requires.

Certain proceedings continued.

154. The application made by A. H. & A. W. Reed Pty. Limited on the ninth day of August, One thousand nine hundred and seventy-one, under section 66H of the *Trade Practices Act 1965–1971* has effect as if it had been made under section 72 of this Act on the date of commencement of this Act and everything done in relation to that application before the commencement of this Act has effect as if it had been done under this Act or the regulations, as the case requires.

Proceedings for exemption by A. H. & A. W. Reed Pty. Limited continued.

Certain
notices
continued.

155.—(1.) A notice served by the Minister under sub-section (1.) of section 90D of the *Trade Practices Act* 1965–1966 or of that Act as amended shall be deemed to have been served under sub-section (1.) of section 108 of this Act.

(2.) A person appointed under section 90D of the *Trade Practices Act* 1965–1966 or of that Act as amended as the agent of a shipowner shall be deemed to have been appointed under section 108 of this Act.

(3.) An address for service of a shipowner notified under section 90D of the *Trade Practices Act* 1965–1966 or of that Act as amended shall be deemed to have been notified under section 108 of this Act.

Particulars
of agreements
continued.

156. It is not necessary for particulars in respect of an agreement furnished under section 90G of the *Trade Practices Act* 1965–1966 or of that Act as amended to be furnished as required by section 111 of this Act and this Act applies to and in relation to particulars so furnished, and to and in relation to the agreement in respect of which they were so furnished, as if the particulars had been furnished under section 111 of this Act.

Repository
of documents
continued.

157. The repository of documents kept under sub-section (1.) of section 90J of the *Trade Practices Act* 1965–1971 shall continue as the repository of documents referred to in sub-section (1.) of section 113 of this Act and documents filed in the first-mentioned repository shall be deemed to have been filed in the last-mentioned repository.

Secrecy.

158. The application of section 115 of this Act extends to information and documents referred to in section 90L of the *Trade Practices Act* 1965–1971.

Undertakings
continued.

159.—(1.) A notice served by the Minister under sub-section (1.) of section 90M of the *Trade Practices Act* 1965–1966 or of that Act as amended shall be deemed to have been served under section 116 of this Act.

(2.) An undertaking given as requested in a notice referred to in the last preceding sub-section shall be deemed to have been given as requested in a notice under section 116 of this Act.

PART XV.—MISCELLANEOUS.

Inspection of,
furnishing
of copies of,
and evidence of,
documents.

160.—(1.) Subject to any direction under section 84 of this Act, a person may, on application in accordance with the regulations and on payment of the prescribed fee—

- (a) inspect the document recording a determination or order of the Tribunal or any other document filed or lodged with the Registrar or recorded in the records of the Tribunal in pursuance of this Act or the regulations; and
- (b) obtain a copy of such a document, certified to be a true copy under the hand of the Registrar or of a Deputy Registrar.

(2.) A copy of a determination or order of, or undertaking given to, the Tribunal, certified to be a true copy under the hand of the Registrar or of a Deputy Registrar, shall be received in all courts as evidence of the determination, order or undertaking.

161. In proceedings under Part VIII. or Part XI., a determination or order of the Tribunal out of which the proceedings arose is evidence of the facts stated in the determination or order to have been found by the Tribunal.

Determinations and orders evidence of certain facts.

162. A certificate under the hand of the Commissioner certifying as to any matter relating to the contents of the Register shall be received in all courts as evidence of the matter certified.

Evidence of Register.

163.—(1.) All courts shall take judicial notice of—

Judicial notice.

(a) the official signature of any person who holds or has held the office of President, Deputy President, member, Commissioner, Registrar or Deputy Registrar and of the fact that that person holds or has held that office; and

(b) the official seal of the Tribunal,

if the signature or seal purports to be attached or appended to an official document.

(2.) In this section, “ court ” includes a Federal Court or a court of a State or Territory and all persons authorized by a law of the Commonwealth, of a State or of a Territory or by consent of parties to receive evidence.

164.—(1.) Prosecutions for offences against this Act shall be brought only in the Court.

Prosecutions.

(2.) Jurisdiction is conferred on the Court to hear and determine prosecutions under this Act.

(3.) Subject to the next succeeding sub-section, the jurisdiction of the Court under this section may be exercised by a single Judge.

(4.) The jurisdiction of the Court in respect of an offence against a provision of Division 3 or Division 4 of Part XII. shall be exercised by not less than three Judges.

(5.) Proceedings before the Court in accordance with this section—

(a) may be instituted by summons upon information; and

(b) shall not be instituted except with the consent in writing of the Attorney-General or of a person authorized by the Attorney-General, by writing under his hand, to give such consents.

(6.) A prosecution for an offence against section 43, 96, 97 or 112 of this Act may be commenced at any time after the commission of the offence.

Validity of
determinations
or orders.

165.—(1.) Subject to this section, the validity of a determination or order of the Tribunal shall not be challenged, reviewed or called in question in any proceedings, including proceedings under Part VIII. or Part XI.

(2.) The last preceding sub-section does not limit the exercise of any jurisdiction of the High Court to issue a writ of prohibition, mandamus or certiorari or to grant an injunction.

Commissioner
may require
furnishing of
information of
production and
documents.

166.—(1.) Where the Commissioner has reason to believe that a person is capable of giving information or producing documents relating to matters that constitute, or may constitute, an examinable agreement, an examinable practice or the practice of resale price maintenance, he may, by notice in writing served on that person, require that person—

- (a) to furnish to him, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information; or
- (b) to produce to him, or to a person specified in the notice acting on his behalf, in accordance with the notice, any such documents.

(2.) A person shall not—

- (a) refuse or fail to comply with a notice under this section to the extent that he is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly furnish information that is false or misleading.

Penalty: One thousand dollars or imprisonment for three months.

(3.) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or document might tend to incriminate him, but his answer to any question asked in the notice, or his furnishing of any other information in pursuance of the notice, is not admissible in evidence against him in any criminal proceedings other than proceedings under this Act.

Inspection, &c.,
of documents.

167.—(1.) The Commissioner, or a person authorized by him, may inspect a document produced in pursuance of a notice under the last preceding section and may make copies of or take extracts from the document.

(2.) The Commissioner may, for the purposes of this Act, take, and retain for as long as is necessary for those purposes, possession of a document produced in pursuance of a notice under the last preceding section but the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commissioner under his hand to be a true copy and the certified copy shall be received in all courts as evidence as if it were the original.

(3.) Until such a certified copy is supplied, the Commissioner shall, at such times and places as he thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorized by that person, to inspect and make copies of or take extracts from the document.

168. The Commissioner shall, within sixty days after each year ending on the thirtieth day of June, furnish to the Attorney-General, for presentation to the Parliament, a report with respect to his operations in that year, including, in respect of the year ending on the thirtieth day of June, One thousand nine hundred and seventy-two, his operations under the *Trade Practices Act 1965–1971*.

Commissioner
to furnish
report.

169.—(1.) This Act does not apply in respect of an agreement or practice specified in the Second Schedule to this Act, being an agreement made by, or a practice of, a body or organization so specified.

Certain
agreements
and practices
not subject
to Act.

(2.) The regulations may amend the Second Schedule to this Act by omitting the name of a body or organization specified in that Schedule and any matter so specified in relation to that body or organization.

(3.) The regulations may amend any matter specified in the Second Schedule to this Act in relation to a body or organization so specified.

(4.) The regulations may provide that all or any of the provisions of this Act are not to apply in respect of all or any agreements made by, or practices of, a specified body or organization that performs functions in relation to the marketing of primary products.

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

Regulations.

- (a) prescribing matters in connexion with the procedure of the Tribunal and fees and expenses of witnesses in proceedings before the Tribunal;
- (b) prescribing matters in connexion with access to documents filed or lodged with the Registrar and the issue of certified copies of such documents;
- (c) requiring a document furnished or used for the purposes of this Act or the regulations to be verified by statutory declaration; and
- (d) prescribing fees to be paid to the Registrar.

THE SCHEDULES**FIRST SCHEDULE**

Sections 15 and 30.

OATH

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of
and that I will
faithfully and impartially perform the duties of that office.

So HELP ME GOD!**AFFIRMATION**

I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of
and that I will faithfully and impartially perform the duties of that office.

SECOND SCHEDULE

Section 169.

AGREEMENTS AND PRACTICES NOT SUBJECT TO ACT

1. Any agreement made by, or any practice of, Ricegrowers' Co-operative Mills Limited
2. Any agreement made by, or any practice of, Australian Dairy Industry Council
3. Any agreement made by, or any practice of, The Australian Dried Fruits Association
4. Any agreement made by, or any practice of, The Committee established under agreements made between Commonwealth Dairy Produce Equalisation Committee Limited and producers of casein and known as the Casein Equalisation Advisory Committee
5. Any agreement made by, or any practice of, The Council of Egg Marketing Authorities of Australia
6. Any agreement made by, or any practice of, The Australian Cannery Association that relates to the marketing of—
 - (a) canned apricots, canned peaches or canned pears; or
 - (b) canned mixed fruits having a fruit content not less than 55 per centum of which consists of one or more of the fruits referred to in the last preceding paragraph.