

FAIR PRICES ACT, 1924-1935.

BEING

FAIR PRICES ACT, 1924, No. 1655 OF 1924 [ASSENTED TO 24TH
DECEMBER, 1924.]

AS AMENDED BY

STATUTE LAW REVISION ACT, 1935, No. 2246 OF 1935
[ASSENTED TO 19TH DECEMBER, 1935.]

An Act to authorise the holding of investigations into the existence of combines, and to prevent the prices of commodities from being fixed or increased to the detriment of the public by the operations of combines, and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Fair Prices Act, 1924-1935."

Short title.
Of. U.K.
21 & 22
Geo. 5 c. 51.

2. In this Act, except where inconsistent with the context—

Interpreta-
tion.

"Board" means the Board of Industry constituted by Part IV. of the Industrial Code, 1920:

"combine" means any contract, agreement, or arrangement, by or between two or more persons carrying on separate businesses which exists for the purpose of, or has, or is designed or likely to have, whether directly or indirectly, the effect of increasing or fixing the price of any article of trade or commerce to the extent of enabling them to determine or control the market price of such article, and includes what are known as trusts and monopolies:

"fixed under this Act" means fixed by declaration made under section 12 of this Act by the Board:

"person" includes any firm, company, or association, whether corporate or unincorporate:

Administration: The administration of this Act was committed to the Minister of Industry by proclamation: *Gazette* 29th January, 1925, p. 149.

“purchaser” includes both a person who buys for the purpose of his own consumption or use, and a person who buys for the purpose of re-sale:

“price” includes both wholesale and retail price:

“registrar” means the industrial registrar in office under the Industrial Code, 1920, or any person for the time being performing the duties of that registrar.

Inserted by
S.L.R. Act,
1935.

Investigations into Combines.

Applications
for investiga-
tion into
combine.
Of. Canada
9 and 10,
Edw. 7, c. 9,
s. 5.

3. (1) Where six or more persons of full age resident in the State are of opinion that a combine exists, and that by reason of its existence prices have been fixed or increased to the detriment of the public, the persons aforesaid may make an application to the Board asking that an investigation be made into the alleged combine.

(2) Every application shall be in writing addressed to the Board, and shall ask for an investigation into the alleged combine, and shall ask the Board to fix a time and place for the hearing of the applicants or their representative.

(3) The application shall be accompanied by a statement setting forth—

- (a) the nature of the alleged combine, the commodities the prices of which are affected thereby, and the persons believed to be concerned therein:
- (b) the manner in which the alleged combine affects prices and the extent to which the alleged combine is believed to operate to the detriment of purchasers:
- (c) the names and addresses of the parties making the application, and the name and address of some person authorised by them to act as their representative for the purpose of this Act, and to receive communications and to conduct negotiations on their behalf.

(4) The application shall be accompanied by a statutory declaration by each of the persons making the application declaring that the facts set forth in the statement accompanying the application are true and that the alleged combine operates to the detriment of purchasers of the commodities mentioned in the application.

(5) An application under this section may be made by the Minister, and the provisions of this Act relating to applications by six or more persons and the proceedings thereon

shall apply *mutatis mutandis* to applications by the Minister: Provided that the declaration of the Minister alone shall be sufficient for the purposes of this section.

4. Within thirty days after the Board receives the application it shall fix a time and place for hearing the applicants, and the Registrar shall send due notice of the time and place so fixed by registeral letter to the representative authorised by the statement to receive communications on behalf of the applicants, or any person claiming to be interested, and cause notice of such time and place to be published in the *Government Gazette* and in at least two daily newspapers circulating in Adelaide. At the hearing the applicants may appear in person or by counsel or by any other person.

Hearing of
applications.
Of. Canada
9 & 10
Edw. 7 c. 9,
s. 6.

5. If upon the hearing the Board is satisfied that there is reasonable ground for believing that a combine exists and that by reason of its existence prices have been fixed or increased to the detriment of the public, and that it is in the public interest that an investigation should be held, the Board shall grant the application and fix a time and place for the holding of an investigation by the Board under this Act; or if not so satisfied, the Board may adjourn the hearing in order to permit further evidence in support of the application to be given, or may refuse to grant the application for an investigation.

Powers of
Board on
applications.
Of. ibid.,
s. 7.

6. If, upon the hearing, the Board is of opinion that the applicants had no reasonable grounds for believing that a combine existed and had fixed or increased prices to the detriment of the public, the Board may, in addition to dismissing the application, order the applicants to pay the costs of the application.

If application
unfounded,
Board may
order costs
to be paid.

7. If the Board grants any application for an investigation the Registrar shall forthwith notify every person alleged in the statement of the applicants to be believed to be concerned in the combine, of the time and place fixed for holding the investigation and cause notice of such time and place to be published in the *Government Gazette* and in at least two daily newspapers circulating in Adelaide.

Notice of
holding of
investigation.

8. At the holding of the investigation the Board shall inquire whether the combine alleged in the application to exist, or any other similar combine affecting the same or substantially the same commodities, does exist, and, if so, whether as a result of its existence prices have been increased or fixed to the detriment of the public.

Investigation.

Publicity of
investigation.

9. The sittings of the Board for the purpose of conducting the investigation or other inquiry under this Act shall be held in public, but the Board may order that any part of the proceedings shall be conducted in private.

Powers of
Board on
investigation.

10. Except where inconsistent with this Act the provisions of the Royal Commissions Act, 1917, shall apply in respect of every investigation or other inquiry held by the Board under this Act as though the Board were a royal commission.

Declaration
by Board.

11. (1) At or after the close of the investigation the Board shall make a declaration declaring—

(a) whether a combine exists, and, if so, what persons are parties thereto:

(b) in respect of what commodities the combine, if any, exists:

(c) whether the price of the commodities in respect of which the combine, if any, exists has as a result of the existence of the combine been fixed or increased to the detriment of the public.

(2) The Board at any time either before or after making any declaration may, and on the application of any person interested shall, state a special case for the opinion of the Supreme Court upon any question arising in the proceeding.

(3) The Supreme Court shall hear and determine the question and remit the case with its opinion to the Board and may make such order as to costs as it thinks fit.

Fixing of Prices.

Fixing of
price.
Of, 1414,
1919, s. 11.

12. If the Board declares that the price of any commodity has as a result of the existence of a combine been fixed or increased to the detriment of the public, the Board with regard to that commodity may by declaration published as mentioned in the next succeeding section—

(a) fix the maximum price at which the same shall be sold;

(b) fix different maximum prices according to differences in quality or description, or in the quantity sold;

(c) fix different maximum prices for different parts of the State;

(d) from time to time, revoke any price previously fixed by the Board, and fix some other price in lieu thereof, but only so as to apply to future transactions;

- (e) extend the time during which any declaration or part of a declaration is to remain in operation;
- (f) in fixing any price, do so relatively to such standards or measurement, weight, capacity, or otherwise, as it thinks proper;
- (g) fix maximum prices on a sliding scale;
- (h) fix maximum prices which shall vary in accordance with a standard, time, or other circumstance;
- (i) fix maximum prices on a condition or conditions;
- (j) fix maximum prices which shall vary with profits, dividends, or wages;
- (k) fix maximum prices for cash or credit, or for delivery, and in any such case inclusive or exclusive of the cost of packing;
- (l) fix maximum prices on a percentage basis on landed or other cost; and
- (m) fix maximum prices according to or upon any principle or conditions prescribed.

13. (1) Every declaration under the next preceding section shall be published in the daily newspapers known as *The Advertiser* and *The News*, and shall also be published in the *Government Gazette*, and shall take effect upon the first day of the publication, or upon such later date as may be fixed by the declaration.

Publication and date of operation of declarations.

Amended by S.L.R. Act, 1935.

(2) Every such declaration as aforesaid shall remain in operation for the period therein specified, or for any extension of that period, or if no period is specified in the declaration, until revoked by the Board.

14. When the price of any commodity has been fixed under this Act, any person dealing in that commodity may apply to the Board in the manner prescribed to revoke or vary the declaration fixing the price, and the Board may, if it think good cause is shown, revoke or vary the declaration fixing the price.

Applications for revocation of declaration.

15. Where the price of any commodity has been fixed under this Act, the price so fixed shall apply to—

Effect of declaration on existing contracts.

- (a) the sale of any quantity of that commodity after the date when the declaration under section 12 of this Act takes effect, in pursuance of a contract entered into before that date unless the Board certifies that as regards any particular contract or class of contracts it is undesirable that the price so fixed should apply:

- (b) every sale of any quantity of the said commodity after the date when the said declaration takes effect in pursuance of a contract entered into after that date.

Penalty for offering higher prices than fixed prices.

16. Any person who, whether by way of premium or otherwise howsoever, knowingly purchases or offers to purchase wholesale any commodity the price of which is fixed under this Act, at a greater price than the price so fixed shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding one hundred pounds or to imprisonment for any term not exceeding six months for a first offence, and to a penalty not exceeding two hundred pounds or to imprisonment for any term not exceeding twelve months for a second or any subsequent offence.

Penalty for charging higher prices than the fixed prices.
Of. 1414,
1919, s. 16.

17. (1) Any person who knowingly sells, offers, or exposes for sale, or has in his possession, control, or disposition for sale, any commodity the price of which is fixed under this Act, at a price greater than the price so fixed shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, for a first offence, and to a penalty not exceeding two hundred pounds or to imprisonment for any term not exceeding twelve months for a second or any subsequent offence.

(2) In any prosecution for an offence under this section an invoice given or account rendered by the defendant, or by some person on his behalf, for the commodity in respect of which the offence is alleged to have been committed, or an offer in writing, signed by the defendant, or by some person on his behalf, to sell that commodity at a specified price, shall be *prima facie* evidence of the sale of or offer to sell the commodity, and of the price charged or to be charged therefor.

Penalty for failing to supply commodity at fixed price.
Ibid., s. 15.

18. (1) If any person who has in his custody, or under his control, any commodity the price of which is fixed under this Act, and in which he usually trades, fails, on—

- (a) demand of any quantity of that commodity, and
(b) tender of payment at the fixed price for the amount demanded,

to supply the commodity in the quantity demanded, he shall, subject to the provisions of this section, be guilty of an offence against this Act, and be liable to a penalty not exceeding one

hundred pounds, or to be imprisoned for any term not exceeding six months: Provided that no person shall be bound to supply any commodity at less than the cost to him thereof at his place of business.

(2) If any person carries on business of any class in connection with which a commodity the price of which is fixed under this Act is usually sold or supplied, or if he has been in the habit of selling or supplying that commodity he shall, for the purpose of this section, be deemed usually to trade in that commodity.

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

- (a) the defendant supplied a reasonable quantity of the commodity demanded; or
- (b) the defendant was a wholesale trader in the commodity, and the person who demanded to be supplied was not a retail trader therein; or
- (c) the defendant had not a sufficient quantity of the commodity in his custody or under his control to supply the quantity demanded, in addition to the quantity required to satisfy all other contracts then subsisting, under which he was obliged to supply quantities of the commodity, and the ordinary requirements of his business.

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

(5) Where a retail trader is prosecuted under this section, the defence that he supplied a reasonable quantity of the commodity demanded shall be sufficiently established by proving that he supplied the person making the demand with a sufficient quantity thereof to meet the reasonable needs, for one week—

- (a) of himself and the members of his household; and
- (b) if the commodity is of a kind generally used for animals, of all animals kept by him of the kinds for which the commodity might reasonably be expected to be used.

(6) For the purposes of this section, all persons who live with and in the same house as a person shall be regarded as members of his household.

(7) In this section—

“wholesale trader” means a trader who usually sells the commodity in question to retail traders only; and
“animals” includes birds.

No compul-
sion to sell
any quantity
of a com-
modity.

19. Where any person in the usual course of his business sells or offers for sale any commodity subject to the observance or performance by the purchaser thereof of certain conditions and such conditions—

(a) are fair and reasonable, and

(b) do not operate to the detriment of the public,

nothing contained in this Act shall be construed—

(1) to compel such person to sell any quantity of any such commodity; or

(2) to render such person liable to any penalty under this Act for refusing to sell any quantity of such commodity

to a person who refuses or neglects to observe or to perform such conditions.

Offences.

20. All proceedings in respect of offences against this Act shall be disposed of summarily.

Financial
provision.

21. The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes.

Regulations.

22. The Governor may make all such regulations as are necessary or convenient for the purpose of carrying this Act into effect.