

Approved for reprint 24th March, 1958.

WESTERN AUSTRALIA.

UNFAIR TRADING AND PROFIT CONTROL.

5° Elizabeth II., No. XXX.

No. 30 of 1956.

As amended by Act No. 57 of 1957¹ and reprinted pursuant to the Amendments Incorporation Act, 1938.

AN ACT to Control and Regulate Unfair Trading and Unfair Profit.

[Assented to 3rd December, 1956.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—INTRODUCTORY PROVISIONS.

Division 1.—General.

1. This Act may be cited as the *Unfair Trading and Profit Control Act, 1956-1957*.

Short title and citation.
No. 30 of 1956, s. 1, as amended by No. 57 of 1957, s. 1.

2. This Act is arranged as follows:—

Arrangement.

PART I.—INTRODUCTORY PROVISIONS.

Division 1.—General.

Division 2.—Administration.

¹ Assented to 6th December, 1957, and proclaimed to come into operation on 30th December, 1957 (see *Gazette* of 20th December, 1957).

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PART II.—POWERS OF INVESTIGATION AND INQUIRY.

PART III.—EXERCISE OF POWERS OF INVESTIGATION AND INQUIRY.

Division 1.—When Power Exercisable.

Division 2.—Power to Declare a Person to be a Declared Trader.

PART IV.—EFFECT OF DECLARING A PERSON TO BE A DECLARED TRADER.

PART V.—BOOKS OF ACCOUNT AND RECORDS TO BE KEPT AND PRESERVED.

PART VI.—OFFENCES.

PART VII.—PUNISHMENT FOR OFFENCES.

PART VIII.—MISCELLANEOUS PROVISIONS.

SCHEDULE.

Commence-
ment.

3. This Act shall come into operation on a day to be fixed by proclamation.¹

This Act does
not affect
Act No. 17 of
1938.

4. This Act does not prejudice or otherwise affect the operation of the Wheat Products Prices Fixation Act, 1938, and shall be construed as separate and distinct from that Act.

Severability.

5. This Act shall be read and construed so as not to exceed the legislative power of the State, the intention being that when any enactment in this Act would, but for this section, have been construed as being in excess of that power, it shall, nevertheless, be a valid enactment to the extent to which it is not in excess of that power.

¹ Proclaimed to come into operation on 18th January, 1957 (see *Gazette* of 18th January, 1957).

6. The objects of this Act are—

Objects of
this Act.

- (a) to prevent unfair profit taking;
- (b) to prevent unfair methods of trading;
- (c) to prevent unfair methods of trade competition;
- (d) to authorise information being obtained in relation to the matters mentioned in paragraphs (a), (b) and (c) of this section; and
- (e) to enable anything necessary as incidental to any of the matters mentioned in paragraphs (a), (b), (c) or (d) of this section to be done.

7. This Act applies to the Crown in right of the State and to agencies and instrumentalities of the Crown in right of the State.

This Act
applies to the
Crown in
right of the
State.

8. In this Act, unless the context requires otherwise—

Interpreta-
tion.
Amended by
No. 57 of 1957,
s. 3

“authorised officer” means any person appointed by the Commissioner to be an authorised officer for the purposes of this Act;

“combine” means an association or combination, whether incorporated or not, of any number of persons having as its object or purpose, or as one of its objects or purposes—

- (a) the controlling or influencing the supply of, demand for or price of any goods or services contrary to the interest of the public; or
- (b) creating or maintaining a monopoly in the supply of any goods or services contrary to the interest of the public;

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but does not include such an association or combination having as its object or purpose, or as one of its objects or purposes, the controlling or influencing of the supply of, demand for, or price of, any goods or services, to the extent to which such controlling or influencing is authorised by any other Act.

No. 57 of
1957, s. 3.

“Commissioner” means, without prejudice to the provisions of section thirty-three of the Interpretation Act, 1918, the person appointed to the office of Unfair Trading Control Commissioner;

“declared trader” means a declared trader under this Act;

Added by
No. 57 of 1957,
s. 3

“Director” means the Director of Investigation appointed under this Act;

“member of a combine” includes the person or persons managing or controlling that combine;

“person” without affecting the meaning given to the expression “person” by sections four and twenty-six of the Interpretation Act, 1918, includes association, firm, and body corporate;

“price” includes every valuable consideration whatsoever, whether direct or indirect;

“trading” means trading in goods or services or both, and “trader” has a correlative meaning;

“unfair profit” means a profit made by a person in respect of the goods or services concerned, wholly or partly as a result of that person being or having been engaged in or a party to unfair trading methods or unfair methods of trade competition and which is, in the opinion of the Commissioner an excess

profit having regard to the cost of the goods or services to the person, the costs of distribution, the type of industry or business concerned, and any other factors which should reasonably be taken into consideration in deciding what is a fair profit;

“unfair trading” means—

- (a) taking any unfair profit;
- (b) using any unfair trading method;
- (c) using any unfair method of trade competition;
- (d) acting in combination with any other person or as a member of a combine in doing any of the matters mentioned in paragraphs (a), (b) and (c) of this interpretation;
- (e) attempting any of the matters mentioned in paragraphs (a), (b), (c) and (d) of this interpretation;
- (f) aiding or attempting to aid any person in, or procuring or attempting to procure any person to, do any of the matters mentioned in paragraphs (a), (b), (c), (d) and (e) of this interpretation

and, correlative expressions have correlative meanings; but does not include the taking of any profit, the using of any trading method, or the using of any method of trade competition, authorised by or pursuant to the Marketing of Barley Act, 1946, the Marketing of Eggs Act, 1946, the Marketing of Onions Act, 1938, the Marketing of Potatoes Act, 1946, the Dairy Products Marketing Regulation Act, 1934, the Wheat Industry Stabilisation Act, 1954, the Wheat Marketing Act, 1947, or any other Act of the State or the Commonwealth having as its objects or part of its objects the orderly marketing of primary products;

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“unfair trading methods” or “unfair methods of trade competition” mean—

- (a) the making of or entering into any contract or agreement, with any person or the continuing to be a member of or engaging in any combine, in relation to trade or commerce within the State—
 - (i) in restraint of or with intent to restrain trade or commerce; contrary to the interest of the public; or
 - (ii) to the destruction or injury of, or with the intent to destroy or injure by means of unfair competition, any industry the preservation of which is advantageous to the State;
- (b) the making of or entering into any contract or agreement providing for the establishment or maintenance of minimum resale prices of commodities, or for limiting the distribution thereof, between persons in competition with each other;
- (c) the monopolising or attempting to monopolise, or combining with any person to monopolise, any part of the trade or commerce within the State: Provided that nothing in this paragraph shall apply to the sole distribution rights of a commodity carrying the trade mark, brand or name of the producer or distributor, and which is in free and open competition with commodities of the same general class produced or distributed by others;
- (d) (i) the discriminating in price between different purchasers of goods of like grade or quality

where the effect of such discrimination may be contrary to the public interest substantially to lessen competition or tend to create a monopoly in any line of trade or commerce, or to injure, destroy or prevent competition.

- (ii) being a party, whether as seller or purchaser, to a sale by or to a person engaged in trade, commerce or industry, that discriminates, directly or indirectly against competitors of the purchaser, in that a discount, rebate, allowance, price concession, or other advantage, is granted to the purchaser over and above any discount, rebate, allowance, price concession, or other advantage, available at the time of the sale to the competitors in respect of a sale of goods of like quantity and quality.

Added by
No. 57 of 1957,
s. 3.

Provided nevertheless that the term "goods" does not include goods *bona fide* sold at public auction.

Division 2.—Administration.

9. (1) Subject to the general control of the Minister, and subject also to the provisions of this section, this Act shall be administered by the Commissioner.

Administra-
tion.

(2) For the purposes of this Act the Governor shall appoint to advise the Commissioner an Advisory Council of four persons comprising—

- (a) two representatives representing the organisations known as the Chamber of Manufactures, the Chamber of Commerce and the Retail Grocers' Association;
- (b) one representative nominated by the Minister to represent the general public;

- (c) one representative representing primary producers.

(3) Each member of the Council representing the organisations mentioned in paragraph (a) of the last preceding subsection shall be selected by the Governor from a panel of four names submitted conjointly by those organisations, and the member representing primary producers shall be selected from a panel of two names submitted by The Farmers Union of Western Australia (Inc.), to the Governor in either case within such time as the Governor appoints, or if in either case no such panel is submitted each member of the Council other than the member nominated by the Minister shall be such person as the Governor thinks fit.

(4) Each member of the Council shall hold office during the Governor's pleasure.

(5) The Council shall meet whenever summoned by the Commissioner but not more than one month shall elapse between each meeting.

(6) The number of members necessary to constitute a quorum shall be three and the Commissioner shall be Chairman of and preside at each meeting.

Cost of
administra-
tion.

10. The cost of the administration of this Act shall be paid out of moneys appropriated by Parliament for the purpose.

Appointment
of Commis-
sioner.

11. (a) For the purposes of giving effect to the objects of this Act, an office by the name of Unfair Trading Control Commissioner is hereby created.

(b) The Governor may appoint to the office for such term, at such remuneration, and subject to such conditions of service, as the Governor determines, and is hereby authorised to determine, a person having experience in commercial, business, and trading affairs.

11A. (1) The Governor may appoint an officer to be known as the Director of Investigation.

Appointment of Director of Investigation.

Added by No. 57 of 1957, s. 4.

(2) The Governor may appoint the Director for such term, at such remuneration, and subject to such conditions of service, as the Governor determines, and is hereby authorised to determine.

(3) The person appointed to the office of Director shall be a member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants having knowledge of commerce, trading and business affairs.

(4) The Governor may at any time appoint a person having the necessary qualifications, to be called the Acting Director, to act, and who shall act as Director during the absence of the Director or during any vacancy in the office of Director.

12. (a) The Minister may, on the recommendation of the Commissioner, appoint to such other positions as, in the opinion of the Minister, are required to carry out the purposes of giving effect to the objects of this Act, such persons for such terms, at such remuneration, and subject to such conditions of service, as the Minister determines and is hereby authorised to determine.

Appointment of staff.

Amended by No. 57 of 1957, s. 5.

(b) The Governor may, at any time appoint a person, to be called the Acting Commissioner, to act and who shall act as Commissioner during the absence of the Commissioner or during any vacancy in the office of the Commissioner.

Appointment of Acting Commissioner.

(c) With the consent of the Minister administering any department of the Public Service of the State, or of any other State of the Commonwealth, or of the Commonwealth, the Minister may, for the purposes of this Act, co-opt the services of any person employed in that department upon such terms as may be agreed between that Minister and the Minister.

Provision to co-opt services.

(d) If the person appointed to the office of Commissioner, or of Acting Commissioner or Director or Acting Director, or a person appointed under paragraph (a), or a person whose services are so co-opted under paragraph (c) of this section, is an officer within the meaning of the Public Service Act, 1904, the appointment shall be without prejudice to the provisions of that Act and all other Acts applying to that person as such an officer, and shall not prejudice his rights as such under any of those Acts.

General powers of Commissioner.

13. The Commissioner has and may exercise such powers and functions and is entitled to such immunities as are prescribed by this Act.

General powers of Director.
Added by No. 57 of 1957, s. 6.

13A. The Director has and may exercise such powers and functions and is entitled to such immunities as are prescribed by this Act.

Secrecy.

14. (a) (i) A person shall not, except in the course of his duty pursuant to the provisions of this Act, directly or indirectly communicate or divulge any information relating to any matter which comes to his knowledge in consequence of his official position.

(ii) For the purposes of this paragraph, the expression "course of his duty" includes communicating or divulging, when considered expedient, any such information to any person or body, who or which on behalf of the Commonwealth or any other State of the Commonwealth, discharges any duties under the provisions of any other Act or delegated legislation having purposes or provisions, wholly or in part, similar to those of this Act.

Declarations of secrecy.

(b) Each person exercising any power or performing any duty pursuant to the provisions of this Act shall, before entering on his duties under those provisions, make and sign a declaration of secrecy in accordance with the form in the Schedule to this Act.

Schedule.

(c) All declarations of secrecy so made and signed under the provisions of this Act shall be lodged with, and retained by, the Minister.

(d) Nothing in this section shall be deemed to prohibit—

- (i) the Commissioner, whenever he considers it necessary or desirable to do so, from producing to the Attorney General and the Minister, for use in connection with the prosecution of a person for any offence under this Act, any documents, books or papers containing any such information;
- (ii) any person exercising any power or performing any duty under the provisions of this Act, from answering any question relating to any such offence which he is required to answer when called as a witness in the prosecution of a person for that offence; and
- (iii) the Commissioner, or any person so authorised by the Commissioner, from communicating to the Commissioner of Taxation, or a Deputy Commissioner of Taxation, any information for the purpose of the administration of any law relating to taxation.

15. No matter or thing done in good faith by the Minister or any person in exercise or purported exercise of any power or in performance or purported performance of any duty or function pursuant to the provisions of this Act subjects him to any liability in respect thereof.

Protection
of adminis-
trative
authority.

16. (1) The Commissioner or Director may, if he thinks fit, for the purposes of any investigation or inquiry authorised by this Act, call in, with the approval of the Minister, the aid of advisers possessing expert knowledge, or knowledge of commercial, trading, or business affairs, or any class of such affairs.

Advisers.
Amended by
No. 57 of 1957.
S 7.

(2) The Minister may approve the calling in of such advisers on such terms and conditions as to their remuneration and services as he thinks fit.

(3) An adviser appointed in pursuance of subsection (1) of this section is entitled to receive such remuneration for his services, and such travelling allowance at such rates, as the Minister determines.

Certain persons are not compellable witnesses.

17. Neither the Minister nor any person who is or has been exercising any power or performing any duty or function pursuant to the provisions of this Act is a compellable witness in any proceedings against any person for contravening or failing to comply with—

- (a) any of those provisions; or
- (b) any provision of any order, direction, notice, document, matter or thing made, given or published in pursuance of any of those provisions.

PART II.—POWERS OF INVESTIGATION AND INQUIRY.

Powers of investigation and inquiry. Amended by No. 57 of 1957, s. 8.

18. For the purposes of making any investigation which the Director considers necessary in the public interest for giving effect to the objects of this Act, the powers prescribed in this Part are hereby conferred, and the provisions of this Part apply.

Power to obtain information. Amended by No. 57 of 1957, s. 9.

19. (1) The Director or an authorised officer may require any person—

- (a) to furnish him with such information as he requires; or
- (b) to answer any question put to him,

in relation to any matter the subject of investigation or inquiry under this Act.

(2) The Director or an authorised officer may require the information to be given, or the question to be answered on oath orally for which purpose the

Director or officer may administer an oath; or by statutory declaration, for which purpose the Director or officer has the authority of a Commissioner for Declarations.

(3) The Director or authorised officer may, by notice in writing require the information to be given, or the question to be answered, in writing and at the place specified in the notice.

(4) A person shall not, when so required under subsection (1) of this section—

- (a) refuse or fail to furnish any information or to answer any question; or
- (b) give any information or make any answer which is false in any particular.

(5) A person shall not be obliged to answer orally any question or questions unless he has first been informed by the Director, or the authorised officer asking the question or questions, that he is required and is obliged to answer by virtue of this section, nor shall a person be obliged to furnish any information nor answer any question until he has been given sufficient notice to enable him to obtain the information or ascertain the answer as the case may be.

19A. If any person is in doubt as to whether any contract or agreement to which he is or proposes to be a party might render him liable to be charged with unfair trading methods or unfair methods of trade competition he may deliver to the Commissioner a true copy of such contract or agreement or proposed contract or agreement and if the Commissioner, having regard to the need for production and distribution of the goods concerned by the most economic means and the requirements for the establishment of new industries and the successful development of technical improvements and the establishment of markets, is of the opinion that such contract or agreement or proposed contract or agreement is not detrimental to the public interest, he may certify in writing accordingly and thereupon no person a party to such contract or agreement and

Subs. (6) of s. 19 redesignated as s. 19A by No. 57 of 1957, s. 9.

complying with the terms thereof shall be deemed to be guilty of unfair trading methods or unfair methods of trade competition.

Power to enter premises and inspect documents.
Amended by No. 57 of 1957, s. 10

20. (1) The Director, or an authorised officer, may, on obtaining from a Justice of the Peace the issue of a warrant for the purpose, and with such force, if any, as is necessary, enter upon and search any premises upon which any trade or business is conducted by a person suspected of unfair trading and inspect any documents, books, and papers, and may inspect and take samples of any stocks of goods, and inspect any service carried on there: Provided that any such entry shall only be made during such hours as the premises may lawfully be open for business.

(2) The Director, or an authorised officer, may make copies or abstracts of, but shall not remove from the premises wherein the same are kept, any documents, books and papers produced to, or inspected by him, in pursuance of this section, or of any entries therein, and in the absence of proof to the contrary any copy certified as correct by the Director shall be received in all Courts as evidence of and as of equal validity as, the original.

Production of balance sheets and other accounts and statements.
Amended by No. 57 of 1957, s. 11.

21. (1) A trader, upon being required to do so by notice in writing by the Director or by an authorised officer shall produce to the Director or to the officer—

- (a) all balance sheets, manufacturing, trading, profit and loss, production and revenue, accounts, and all production, financial, and statistical, and similar, statements prepared by or on his behalf of the trader in relation to the trader's business;
- (b) all documents of any kind which relate to the conduct of the business,

which are specified in the notice, and shall furnish the Director with copies of those balance sheets, accounts, statements and documents, or such of them as he may require.

(2) Where any balance sheet, account, statement, or document, required to be produced to the Director or officer, is in the possession or control of any person other than the trader to whose business it relates, that person shall, upon being required by notice in writing to do so by the Director or officer, produce to the Director or officer that balance sheet, account, statement, or document.

(3) A trader or other person so required to produce to the Director or officer any balance sheet, account, statement, or document, shall, if the Director or officer so requires, permit the Director or officer to make a copy of, or to take an extract from that balance sheet, account, statement, or document.

22. A person shall not, on production to him of the necessary warrant, prevent or attempt to prevent the Director, or an authorised officer from, or hinder or attempt to hinder him in, lawfully entering upon any premises, or inspecting any documents, books, or papers, or inspecting or taking samples of any stocks of goods, or from lawfully inspecting any service, or from lawfully making copies or abstracts of any documents, books or papers, or of any entries therein.

Obstruction.
Amended by
No. 57 of 1957,
s. 12.

23. (1) The Director and any authorised officer may—

Powers
relating to
evidence
Amended by
No. 57 of 1957,
s. 13.

- (a) summon witnesses;
- (b) take evidence on oath or affirmation; and
- (c) require the production of documents, books, papers, and things.

(2) Witnesses summoned in pursuance of subsection (1) of this section are entitled to receive such fees and allowances as the Minister determines and is hereby authorised to determine.

(3) Without prejudice to the provisions of section eleven of the Evidence Act, 1906, where a person is, by virtue of any of the provisions of this Act

or of any order or thing made or promulgated pursuant to the provisions of this Act, required to answer questions orally, he shall not refuse to answer any question on the ground that the answer might tend to incriminate him or make him liable to any penalty, but the answers given by him shall not be admissible in evidence in any proceedings against him other than proceedings in respect of the falsity of the answers or in respect of the refusal or failure to answer any question.

Affirmation
in lieu of
oath.
Amended by
No. 57 of 1957,
s. 14.

24. (1) Where any witness to be examined by the Director or an authorised officer conscientiously refuses to take an oath, he may take an affirmation that he conscientiously objects to take an oath and that he will state the truth, the whole truth and nothing but the truth, to all questions asked him.

(2) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

Failure to be
sworn,
produce
documents,
or answer
questions.
Amended by
No. 57 of 1957
s. 15.

25. (1) A person, having appeared as a witness before the Director or an authorised officer, whether summoned so to appear or not, shall not refuse, without lawful excuse, to be sworn, or to make an affirmation, or to produce documents, books and papers, or to answer questions which he is lawfully required to answer.

(2) The provisions of the Royal Commissioners Powers Act, 1902 relating to protection of witnesses apply as if repeated in this section and may be exercised by the Director.

Failure of
witness to
appear.
Amended by
No. 57 of 1957,
s. 16.

26. A person, having been summoned as a witness by the Director, or by an authorised officer, shall not fail, without lawful excuse, to appear in obedience to the summons.

27. (1) The Director may, by notice in writing, require any person to furnish him or to an authorised officer, within a specified time and in a specified form, a return setting forth to the best of the person's knowledge and ability, the following particulars or such of them as are specified in the notice, namely—

Director's
power to
require
returns.
Amended by
No. 57 of 1957,
s. 17.

- (a) The quantity of any goods in his possession or under his control at a specified date and held for sale.
- (b) The cost to that person of those goods.
- (c) The methods and principles in accordance with which he arrives at that cost.
- (d) Where the maximum price of the goods has not been fixed in pursuance of the provisions of this Act, the prices, wholesale or retail, at which, and conditions on which, he has sold, sells, or proposes to sell, the goods.
- (e) The price, wholesale or retail, charged by the person on such date as the Director specifies, for the goods and the conditions of any such sale; and
- (f) such further particulars as are specified in the notice.

(2) The Director may, by notice, require any person or body of persons engaged in the supply or carrying on of any service to furnish to him, or to an authorised officer, a return setting forth to the best of the person's knowledge and ability such particulars relating to such service as are specified in the notice.

(3) The return shall be verified by statutory declaration.

(4) Any return furnished by any person under this section shall, in any proceedings under this Act, be admissible in evidence against that person.

- (5) A person shall not—
- (a) fail to comply with any of the requirements of any such notice; or
 - (b) wilfully furnish any false or misleading return.

PART III.—EXERCISE OF POWERS OF INVESTIGATION AND INQUIRY.

Division 1.—When Power Exercisable.

Exercise of powers of investigation.
Amended by No. 57 of 1957, s. 18.

28. Where the Director has reason, whether because of reports made to him, or because of the observations of himself or an authorised officer, to suspect that there is unfair trading, he shall, if of opinion that it is in the public interest to do so, exercise or cause to be exercised all or any of the powers of investigation conferred by Part II. of this Act.

Exercise of power of inquiry.
Subs. (1) of s. 29 repealed and re-enacted by No. 57 of 1957, s. 19.

29. (1) If as a result of investigation the Director has reason to believe that after the coming into operation of this Act, a person is or has been guilty of unfair trading, the Director, if of opinion that it is in the public interest to do so, shall charge the person with the unfair trading before the Commissioner in accordance with the provisions of this section and the Commissioner shall hold or cause to be held an inquiry into the charge in accordance with these provisions;

Amended by No. 57 of 1957, s. 19.

(2) The Director shall cause to be served on the person notice in writing—

- (a) charging the person with unfair trading
- (b) describing the unfair trading charged against him;
- (c) calling on him to show cause at an inquiry to be held by the Commissioner at a time and place appointed in the notice, why he

should not in the conduct of his trading be declared a declared trader under this Act;

- (d) appoint a place for the holding of the inquiry; and
- (e) appoint a time not being less than thirty days from the service of the notice for the commencement of the holding of the inquiry;

(2a) The Commissioner shall, whenever practicable, open the inquiry on the appointed day and proceed with the hearing of the inquiry at the appointed place. ; and

New subs.
(2a)
substituted
for para (f)
of subs. (2)
by No. 57 of
1957, s. 19.

(3) For the purposes of an inquiry under this Act the Commissioner—

- (a) has and may exercise in addition to the powers conferred by this Act, the powers conferred upon Justices of the Peace under the Justices Act, 1902, in all respects as if the matter of inquiry were a matter which may be heard and determined by Justices under that Act;
- (ai) has, in relation to the inquiry, the same powers as are conferred by Part II. of this Act on the Director in relation to an investigation.
- (b) shall permit the person charged with unfair trading to have the assistance during the inquiry of counsel or a solicitor;
- (c) shall exclude the public from hearing the inquiry wholly or in part;
- (d) shall make full inquiry into all matters material and relevant to the subject matter of the charge, and shall act according to

Added by
No. 57 of 1957,
s. 19.

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equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms.

Division 2.—Power to Declare a Person to be a Declared Trader.

Power to declare a person to be a declared trader.

30. (1) If as the result of the inquiry the Commissioner is satisfied that the charge is proved the Commissioner, having regard to the objects of this Act and to the interests of the public—

- (a) may caution the person charged if the subject matter of the charge is, in the opinion of the Commissioner, trivial; or
- (b) may, if the charge is deemed proved by the Commissioner on account of the fact that the person is a party to a contract or agreement coming within the definition in this Act of “unfair trading methods” or “unfair methods of trade competition” accept an undertaking from the person (which undertaking may take such form and be subject to such sureties as the Commissioner may reasonably require) that he will cease to be a party to such contract or agreement or any other contract or agreement of a like nature without the approval in writing of the Commissioner; or
- (c) may declare the person to be a declared trader under this Act.

(2) On application being made to him by a person who is a declared trader under a declaration made under this Part, and on being satisfied by inquiry held under this Part, that it is just to do so, the Commissioner may cancel the declaration and thereupon the person ceases to be a declared trader under this Act.

(3) A person aggrieved by the decision of the Commissioner under this section may within twenty-one days after service on him of notice of

such decision appeal in manner prescribed and on payment of the fees prescribed by regulation to the Judge of the Supreme Court against the decision, which appeal shall be heard in Chambers and the Judge's decision on such appeal shall be final and binding on all parties thereto, and may confirm, reverse, or alter the decision appealed against and may include such order as to the costs of, and incidental to, the appeal as the Judge thinks just.

(4) A person who is declared under this Part to be a declared trader remains a declared trader, and remains subject to the provisions of this Act relating to declared traders, until the declaration is cancelled under subsection (2), or on appeal under subsection (3), of this section, notwithstanding that the person—

- (a) changes his name or address, or both;
- (b) changes his trading identity, whether by changing from trading in his own name, to trading as a firm under a firm name, or to trading as a member of and under the name of a company; or being an association, firm, or company, the name, address, rules, articles, or memorandum or articles of association, as the case may be, of the association, firm, or company, are changed; or by any other means, whether of the same kind as or a different kind from the foregoing.

(5) A person remains liable for an offence committed by him under this Act while a declared trader, notwithstanding cancellation of the declaration after the commission of the offence, and notwithstanding section eleven of The Criminal Code.

(6) The Commissioner shall not declare a person to be a declared trader under this Act unless and until the Advisory Council has first determined the circumstances and conditions in and under which it appears right and proper in the cause of justice to so declare a person provided such determination is

made within twenty-one days after the Commissioner has informed the Council of his intention to make such declaration and the Commissioner shall have due regard to such determination.

(7) The Commissioner—

- (a) shall promulgate any decision made under this section in writing signed by him or on his behalf by an authorised officer;
- (b) shall cause a copy of the decision to be lodged with the Minister; and
- (c) may, by the decision, direct that the decision or any part of it be treated as confidential and not published, or that the decision or any part of it be available for publication, and any such direction has effect according to its tenor.

PART IV.—EFFECT OF DECLARING A PERSON TO BE A DECLARED TRADER.

Effect of declaring a person to be a declared trader.

31. Where a person is declared under Part III of this Act to be a declared trader, then, after the expiration of twenty-one days from the date of the declaration, if the person has not appealed, and until the declaration is cancelled under that Part, the Commissioner may, without prejudice to any other provision of this Act, exercise any of the powers conferred by this Part and the provisions of this Part apply in respect of the person.

Directions.

32. The Commissioner may issue and cause to be served on the person so declared written direction signed by him or on his behalf by an authorised officer directing the person—

- (a) not to repeat, or continue, as the case requires, the unfair trading in respect of which he was so declared;
- (b) not to commit any act of unfair trading;

- (c) as so directed from time to time, not to sell, have or offer for sale, or for hire, or for use, whether as principal or agent, any goods or services or goods and services, or classes of goods or services or goods and services—
- (i) at a price greater than that specified in the direction, or in any subsequent direction which the Commissioner issues, and is hereby authorised to issue from time to time;
 - (ii) in any manner or locality other than that specified in the direction, or in any subsequent direction which the Commissioner issues, and is hereby authorised to issue from time to time;
 - (iii) unless the price so directed is exhibited in the manner specified in the direction.

PART V.—BOOKS OF ACCOUNT AND RECORDS TO BE KEPT AND PRESERVED.

33. (1) Every person who, whether declared under this Act to be a declared trader or not, in the course of, or for the purpose of, or in connection with, or as incidental to, any business carried on by him—

Books of account and records to be kept and preserved.

- (a) produces, manufactures, sells, or supplies, any goods whatsoever; or
 - (b) supplies or carries on any service whatsoever; or
 - (c) does all or any of the things mentioned in paragraphs (a) and (b) of this subsection;
- shall, for the purposes of this Act, keep proper books and accounts, and stock and costing records where applicable, and shall preserve those books and accounts and stock and costing records, including all copies of invoices and all vouchers, agreements, correspondence, cables, telegrams, stock sheets, and

other documents, relating to his purchases of stock, costs and sales of any goods or relating to any service supplied or carried on by him, until their destruction is authorised by the Commissioner.

(2) Without affecting the generality of subsection (1) of this section, the Commissioner may, by notice in writing, direct any person to whom that subsection applies to keep such books, accounts and records as are specified in the notice.

(3) Every person to whom any such direction is given shall comply with the direction and shall preserve the books, accounts and records required to be kept by him in accordance with the direction until their destruction is authorised by the Commissioner.

PART VI.—OFFENCES.

Trial of offences.

34. (1) A person who contravenes, or fails to comply with any provision of this Act, or of any order, direction, notice, document, matter, or thing in force pursuant to the provisions of this Act, commits an offence against this Act.

Cf. Justices Act, 1902, ss. 20 and 51. Interpretation Act, 1930, s. 42.

(2) Offences against this Act may be prosecuted by complaint made under the Justices Act, 1902, at any time within two years from the time when the matter of complaint arose and are punishable summarily under that Act. But notwithstanding the provisions of that Act or of any other Act, all charges under this Act shall be heard before a Court composed of a Resident or Stipendiary Magistrate and not justices only.

(3) An offence against this Act shall not be prosecuted without the consent in writing of the Attorney General.

PART VII.—PUNISHMENT FOR OFFENCES.

Punishment for offences. Amended by No. 57 of 1957, s. 20.

35. (1) The punishment for an offence against this Act is a maximum penalty of five hundred pounds or imprisonment for a term not exceeding six months.

(2) Where a person convicted of an offence against this Act is a corporate body, every person who, at the time of the commission of the offence, was a director or officer of the body corporate shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge, or that he used all due diligence to prevent the commission of the offence.

(3) Where the Commissioner, after inquiry and investigation, which by this Act he and the Director are authorised to make, makes to the Court a report stating that the convicted person has since the coming into operation of this Act made unfair profits as a result of unfair trading related to the offence of the convicted person, and in the report specifies the amount of the unfair profits, and how it is assessed, the Court may impose on the convicted person a fine not exceeding an amount equal to twice the amount of the unfair profits.

(4) The Commissioner shall cause particulars relating to the conviction by a Court of any person for an offence against this Act to be published in the *Gazette*.

(5) If, in any proceedings against a person for an offence against this Act, it appears to the Court hearing the proceedings that any witness for the prosecution is implicated in the offence charged, but has made a full and truthful disclosure of all the circumstances within his knowledge relating to the offence, the Court may issue to the witness a certificate to that effect, and any certificate so issued shall be a bar to any proceedings against that witness in respect of that offence.

PART VIII.—MISCELLANEOUS PROVISIONS.

36. (1) The provisions of section thirty-one of the Interpretation Act, 1918, relating to service of documents and presumption of service in the case of service by post, apply in respect of service of documents under this Act.

Service of documents.

(2) Without prejudice to any other manner of proving service of documents, a copy of a document bearing a certificate purporting to have been signed by a person authorised by this Act to issue it, and certifying that it is a copy of the original of which it purports to be a copy, and bearing a certificate as to service purporting to have been signed by the person certifying as to service, is, in absence of proof to the contrary, sufficient proof of the service of the document.

(3) Where a document is served on a person he shall be deemed to have been given notice to produce the document at any proceedings under this Act.

37. The Commissioner shall in each year prepare an annual report of his proceedings under this Act during the preceding year disclosing therein the result of the operation of this Act except such information as by this Act is required not to be published or in the opinion of the Commissioner should be kept confidential and this report shall in each year be laid on the Table of both Houses of Parliament by the Minister within fourteen days of its receipt or if at that time Parliament is not in session then within fourteen days of the commencement of the next session of Parliament.

Application of Interpretation Act, 1918, generally

38. The express inclusion in this Act of the application to this Act of any of the provisions of the Interpretation Act, 1918, does not exclude the application to this Act of any of the other provisions of that Act.

Decisions made and directions issued have effect according to tenor.

39. A decision made, or direction issued by the Commissioner, is final, is not subject to any appeal, save as provided in subsection (3) of section thirty of this Act, and has effect according to its tenor, but this section does not prejudice any right of appeal which any person has in respect of an offence against this Act.

40. (1) The Governor may make such regulations as he considers necessary, convenient, or desirable, for facilitating the operation of this Act or giving effect to the objects of this Act or for better enabling the Commissioner and Director to carry out their functions under this Act.

Power to make regulations. Cf. No. 30 of 1918, s. 4. "This Act" includes regulations. Amended by No. 57 of 1957, s. 21.

(2) Without prejudice to the generality of the foregoing regulation making power, the Governor may by regulation prescribe as the penalty for a breach of any regulation so made, the penalty prescribed for an offence against this Act or such lesser penalty as the Governor thinks fit.

41. [Repealed by No. 57 of 1957, s. 22.]

SCHEDULE.

S. 15.

Western Australia.

Unfair Trading and Profit Control Act, 1956.

DECLARATION OF SECRECY.

I, _____, of _____, in the State of Western Australia, do solemnly undertake and sincerely declare that, except in the course of my duty under the above Act, I will not directly or indirectly communicate or divulge any information relating to any matter which comes to my knowledge in consequence of my employment for the purposes of that Act.

Signed at _____, this _____ day of _____, 19 _____.

Before me—

.....
Witness.