

TRADE PRACTICES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the Trade Practices Act 1958.

Clause 1 relates to the Short Title.

Clause 2 provides that the Chairman of the Trade Practices and Prices Commission must have legal qualifications.

Clause 3 amends section 8 of the principal Act, which defines the functions of the Commission. The clause includes in those functions the making of orders directing that the effects of a trade practice be reversed by ordering that the persons concerned revert to the trading conditions, including prices, existing before the trading practice was entered into.

The clause further extends the functions of the Commission by enabling it, on the application of the Examiner of Trade Practices and Prices, to stay the operation of a trade practice pending the completion of the Examiner's investigation and the Commission's inquiry into the matter.

The clause also further extends the functions of the Commission by enabling it to make orders under the new sections 18A and 18B of the principal Act (inserted by *clauses 7 and 8* of this Bill).

Clause 4 substitutes a new subsection for subsection (2) of section 16 of the principal Act, which at present provides that for the purposes of conducting any investigation into trade practices the Examiner of Trade Practices and Prices has the powers of a Committee of Inquiry appointed under section 13 of the Industries and Commerce Act 1956.

The new subsection (2) provides that for the purposes of any investigation by the Examiner the Commission may by writing under its seal authorise any person to inspect, examine, and audit any books or documents, to require any person to produce books or documents and allow copies of or extracts therefrom to be made, and to require any person to furnish any information or particulars required by the Examiner and any copies of or extracts from

any books or documents. These are the same powers that, under section 18 (4) of the principal Act, the Commission or a person authorised by it may exercise for the purposes of an inquiry by the Commission, and are the same as those that, under section 11 (4) of the Control of Prices Act 1947, the Price Tribunal may authorise to be exercised for the purposes of any inquiry or investigation under that Act.

Clause 5 inserts a new section 16B in the principal Act providing that where in the course of an investigation into a trade practice the Examiner considers that the trade practice should be discontinued until the investigation is concluded and any inquiry by the Commission has been held or dispensed with, he may apply to the Commission for an order that the trade practice be discontinued and that the effects of the practice be reversed.

On any such application, the Commission may order that the trade practice be discontinued and its effects be reversed for a specified period, not exceeding 6 months. That period may be extended from time to time, up to 6 months at a time.

Clause 6 amends section 17 of the principal Act, which at present provides that if the Examiner after investigation finds a trade practice to be contrary to the public interest, he must report the matter to the Commission. The Commission then under section 18 conducts an inquiry into the matter unless under that section it decides to dispense with an inquiry.

The Examiner has no authority to refer the practice to the Commission for inquiry unless he forms a definite opinion that the trade practice is contrary to the public interest.

This clause enables the Examiner, where he is in doubt as to whether or not a trade practice is contrary to the public interest, to make a factual report to the Commission without expressing any opinion that the practice is contrary to the public interest and without making any recommendation to the Commission. The Commission may then conduct an inquiry into the matter.

Clause 7 inserts a new section 18A in the principal Act relating to the approval of agreements or arrangements specified in paragraphs (b) to (d) of section 19 (2) of the principal Act, which relate to collective pricing. *Clause 12* makes it an offence for any person to be a party to any collective pricing agreement that has not been approved by the Commission, and the purpose of the new section 18A is to provide the necessary procedure for that approval to be obtained.

The new section 18A provides that any party to such an agreement or any trade association may apply to the Commission for its approval of that agreement. On receiving such an application, the Commission must hold an inquiry, and if the applicant satisfies the Commission that the agreement is not contrary to the public interest, the Commission may grant its approval. That approval may be subject to conditions.

Provision is made in *subsection (6)* for any such approval to be revoked, or for any conditions subject to which approval was granted to be altered or for new conditions to be substituted or added.

Clause 8 inserts a new section 18B in the principal Act providing for the notification of trade practices to the Examiner. The section provides that if the Examiner has reasonable cause to believe that persons engaged in any particular trade are parties to a trade practice coming within any of the categories specified in section 19 (2) of the principal Act, he may apply to

the Commission for an order requiring those persons to furnish to the Examiner particulars as to the persons who are parties to the trade practice.

Clause 9 substitutes a new subsection for section 19 (1) of the principal Act, which at present provides that the Commission may make orders directing the discontinuance or non-repetition of trade practices that are contrary to the public interest or permitting the continuance or repetition of such trade practices subject to conditions.

The new subsection (1) repeats these provisions and also includes provisions enabling the Commission to make orders reversing the effect of trade practices by directing that the persons carrying them on revert to the trading conditions, including prices, existing before the trade practices were entered into.

Clause 10 amends section 19 (2) of the principal Act, which provides that an order may not be made under that section unless the trade practice concerned is, in the opinion of the Commission, substantially within one or more of the categories specified in the subsection. Among those categories is a trade practice consisting of an unjustifiable refusal by a wholesaler to sell or supply goods to a retailer.

This clause includes as an additional category an unjustifiable refusal by a wholesaler to supply goods to a retailer at prices and on terms and conditions normally extended to retailers generally.

Clause 11 amends section 20 of the principal Act, which declares that a trade practice shall be deemed contrary to the public interest only if it would have one of the effects specified in that section. Under subsection (1) (d) a trade practice will be contrary to the public interest if its effect is to prevent or limit competition in the production, manufacture, supply, transportation, storage, sale, or purchase of any goods.

This clause declares that in determining under paragraph (d) whether or not a trade practice is contrary to the public interest, the Commission must be guided by the principle that competition is desirable and that until the contrary is proved, any reduction or limitation of competition, whether in prices or otherwise, is unreasonable.

Clause 12 makes it an offence for any person (including a trade association) to enter into a collective pricing agreement unless before the agreement was entered into the approval of the Commission to the agreement had been obtained under section 18A of the principal Act, proposed to be inserted by *clause 7* of this Bill. In the case of existing agreements, it will be an offence for any person to continue to be a party to or to give effect to the agreement after 1 April 1971 unless before that date the agreement has been approved by the Commission under the proposed section 18A. Where application for approval of an existing agreement has been made before that date, the date is extended until the application and any appeal from the decision of the Commission on the application have been disposed of.

Agreements or arrangements fixing scales of fees or charges are excluded from the operation of these provisions if they are fixed or approved by the person or body authorised by any Act to fix or approve them.

Clause 13 substitutes a new section for section 23c of the principal Act, which fixes the maximum fines for the offences under sections 23A and 23B of collective tendering and collective bidding. The section fixes different penalties for first offences, second offences, and third and subsequent offences.

The new section 23c fixes maximum fines for offences against Part IV_A of the principal Act (which Part includes sections 23_A and 23_B referred to above and also the new section 23_{BB} inserted by *clause 11* of this Bill) of \$1,000 in the case of an offence committed by an individual and \$5,000 in the case of an offence committed by a company or other corporation. Different penalties for first, second, and third, and subsequent offences are not fixed.

Clause 14 substitutes new *sections 24 to 31* for sections 24 to 36 of the principal Act which provide for the appointment of a Trade Practices Appeal Authority to hear appeals from orders of the Trade Practices and Prices Commission under section 19 of the principal Act. Under that section, the Commission may make an order directing the discontinuance or non-repetition of a trade practice or permitting its continuance or repetition subject to conditions. The new sections so substituted result from recommendations of the Public and Administrative Law Reform Committee in its First Report on Appeals from Administrative Tribunals (January 1968).

The new *section 24* provides for such appeals to go to the Administrative Division of the Supreme Court instead of to the Trade Practices Appeal Authority.

The new *section 25* specifies the matters on which appeals will lie to the Administrative Division. An appeal will lie against—

- (a) A decision under *section 18A* (proposed to be inserted by *clause 7* of this Bill) refusing an application for the Commission's approval of a collective pricing agreement or granting that approval subject to conditions:
- (b) A decision under *section 18A (6)* revoking such an approval or amending conditions subject to which approval was granted or adding or substituting conditions:
- (c) An order under section 19 directing the discontinuance or non-repetition of a trade practice or permitting its continuance or repetition subject to conditions or directing the discontinuance or non-repetition of a trade practice and directing the reverting to former trading conditions.

The new *section 26* specifies the persons who are entitled to appeal under *section 24*. Only the following persons may appeal—

- (a) The applicant for an order under *section 18A* for the approval of a collective pricing agreement where the application is refused or approval is granted subject to conditions:
- (b) The person on whose application a collective pricing agreement was approved under *section 18A* where that approval is revoked or conditions of approval are amended, added, or substituted:
- (c) Any person who by an order under section 19 is directed to discontinue a trade practice or is permitted to continue a trade practice subject to conditions or is directed to discontinue a trade practice and revert to former trading conditions:
- (d) Where any order referred to in paragraph (c) of this note is directed to a class of persons, any member of that class.

The new *section 27* re-enacts, with appropriate modifications, sections 28 (1), 29 (1)–(3), and 32 of the principal Act, dealing with the procedure and powers of the Court in the hearing and determination of an appeal.

Matters omitted are either not relevant to appeals to the Supreme Court or are covered by the Supreme Court (Administrative Division) Rules 1969 (S.R. 1969/145).

The new *section 28* re-enacts, without material alteration, *section 33* of the principal Act, and empowers the Court to refer back to the Commission for reconsideration, the whole or any part of the subject-matter of an appeal.

The new *section 29* provides that the Examiner of Trade Practices and Prices shall have a right of appeal to the Administrative Division of the Supreme Court from any decision of the Commission. This right of appeal may be exercised on a question of law only. In this respect, the section differs from the recommendation of the Public and Administrative Law Reform Committee.

The right of appeal under this section may be exercised only in respect of a point of law arising in—

- (a) Any decision of the Commission under *section 18A* of the principal Act (proposed to be inserted by *clause 7* of this Bill)—
 - (i) Approving a collective pricing agreement; or
 - (ii) Refusing an application by the Examiner to revoke any such approval; or
 - (iii) Altering any conditions subject to which any such approval was granted or imposing new or additional conditions; or
 - (iv) Refusing an application by the Examiner to alter any such conditions or to impose new or additional conditions:
- (b) Any decision of the Commission making an order under *section 19* of the principal Act or refusing to make such an order.

These matters correspond to the matters in respect of which other parties may appeal under *section 25*, referred to earlier in this note.

The new *section 30* re-enacts without alteration, *section 34* of the principal Act that pending the determination of an appeal, the order appealed against will have no effect.

The new *section 31* provides for an appeal to the Court of Appeal, by way of case stated on a question of law only, from decisions of the Administrative Division of the Supreme Court under the new *section 24* or *section 29*. This also gives effect to a recommendation of the Public and Administrative Law Reform Committee, except that the section provides that an appeal may be made to the Court of Appeal only if the Administrative Division grants leave to appeal or, if that Division refuses leave, the Court of Appeal grants leave.

Where leave to appeal is granted, the decision of the Administrative Division will nevertheless have effect pending the determination of the appeal, unless the Court granting leave otherwise directs.

Clause 15 makes the necessary transitional provisions as to appeals already made to the Trade Practices Appeal Authority and not determined by that Authority before the passing of the Bill.

Clause 16 consequentially re-enacts in an amended form *section 23* of the principal Act.

The new *section 23* includes the existing provision that proceedings before the Commission shall not be held bad for want of form. It omits the existing provision that proceedings or decisions of the Commission may not be challenged, reviewed, quashed, or called in question in any Court.

Clause 17 consequentially re-enacts in an amended form section 38 of the principal Act.

The present section 38 provides that the Chairman of the Commission or the Trade Practices Appeal Authority may state a case for the opinion of the Court of Appeal on a question of law. The new *section 38* omits the provisions relating to the Appeal Authority, and the case is to be stated to the Supreme Court instead of to the Court of Appeal and is to be heard and determined by the Administrative Division of the Court.

Clause 18 re-enacts in an amended form section 39 of the principal Act, which at present provides that the Act applies to the performance of services and the rates and fees charged therefor in the same manner as it applies to the sale of goods and the prices charged therefor.

Doubts have now arisen as to whether the provisions of the Act relating to a refusal to sell goods apply to a refusal to supply services, and as to whether the provisions relating to the costs of the production, manufacture, transport, storage, or distribution of goods apply to the costs of providing services. In addition, the term "services" is not defined in section 39, and doubts have arisen as to the extent of that term.

The new section 39 provides expressly that the provisions of the Act apply to the refusal to supply services and to the costs of providing services. *Subsection (2)* includes a definition of "performance of services" which provides that the expression includes the doing of any thing pursuant to a contract or agreement with any person which confers any right or benefit on that person or any other person.

Clause 19 inserts a new section 42A in the principal Act providing that an information for an offence may be laid at any time within 2 years from the time when the matter of the information arose. At present, the general provision in section 14 of the Summary Proceedings Act 1957 applies, and the information must be laid within 6 months.

Hon. Mr Shelton

TRADE PRACTICES AMENDMENT

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A BILL INTITULED

An Act to amend the Trade Practices Act 1958

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

No. 89—1

1. Short Title—This Act may be cited as the Trade Practices Amendment Act 1970, and shall be read together with and deemed part of the Trade Practices Act 1958* (hereinafter referred to as the principal Act).

2. Trade Practices and Prices Commission—Section 3 of the principal Act is hereby amended by inserting, after subsection (2) (as substituted by section 2 of the Trade Practices Amendment Act 1964), the following subsection: 5

“(2A) The person appointed to be the Chairman of the Commission shall be a barrister or solicitor of the Supreme Court, whether or not he holds or has held any judicial office.” 10

3. Functions of Commission—(1) Section 8 of the principal Act is hereby amended by adding to paragraph (b) the words “and directing (in either case) that in order to remove in whole or in part the consequences of any such trade practice the person carrying on that practice take such steps as the Commission specifies to revert to the trading conditions, including prices, existing before the trade practice was entered into”. 15 20

(2) Section 8 of the principal Act is hereby further amended by inserting, after paragraph (b), the following paragraph:

“(bb) To make orders directing that, pending the completion by the Examiner of his investigation into the trade practice and any inquiry of the Commission into the matter, any trade practice be discontinued or not repeated, and (in either case) in order to remove the consequences of the trade practice the person carrying on that practice take such steps as the Commission specifies to revert to the trading conditions, including prices, existing before the trade practice was entered into:”. 25 30

(3) Section 8 of the principal Act is hereby further amended by adding the following paragraphs: 35

“(f) To hear and determine applications under section 18A of this Act for the approval of the Commission to agreements or arrangements of the kinds referred to in that section: 40

“(g) To make orders under section 18B of this Act directing the furnishing to the Examiner of particulars in respect of trade practices.”

5 **4. Investigation into trade practices by Examiner**—Section 16 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) For the purposes of any investigation conducted by the Examiner, any person authorised in that behalf by writing under the seal of the Commission may—

10 “(a) Inspect, examine, and audit any books or documents:

“(b) Require any person to produce any books or documents in his possession or under his control, and to allow copies of or extracts from any such books or documents to be made:

15 “(c) Require any person to furnish, in a form to be approved by or acceptable to the Examiner, any information or particulars that may be required by the Examiner, and any copies of or extracts from any such books or documents as aforesaid.”

20 **5. Stay of trade practice pending completion of investigation and inquiry**—The principal Act is hereby further amended by inserting, after section 16A (as inserted by section 2 of the Trade Practices Amendment Act 1965), the following section:

25 “16B. (1) Where during the course of an investigation under section 16 of this Act the Examiner is of the opinion that the trade practice being investigated should be discontinued or not repeated until the investigation is concluded and the Commission has either held an inquiry or dispensed with an inquiry under section 18 of this Act (hereinafter referred to as the
30 completion of the investigation and inquiry), he may apply to the Commission for an order requiring the parties to discontinue or not to repeat the trade practice until the completion of the investigation and inquiry, and also, if he thinks fit, a further order directing that in order to remove
35 in whole or in part the consequences of that trade practice the person carrying it on shall (until the completion of the investigation and inquiry), take steps to revert to the trading conditions, including prices, existing before the trade practice was entered into.

“(2) As soon as conveniently may be after the receipt of an application for an order under this section, the Commission shall fix a time and place for the hearing of the application, and shall give notice thereof to the Examiner and to any person carrying on the trade practice being investigated. 5

“(3) At the hearing of the application the Commission shall hear the representations made by the Examiner and any person carrying on the trade practice being investigated.

“(4) In its determination of an application made under this section, the Commission may refuse to grant an order or may grant an order subject to such conditions as may be prescribed in the order, but in no case shall the term of the order exceed a period of 6 months from the making of the order: 10

“Provided that the Commission may from time to time, on the application of the Examiner, extend any order under this section for one or more further periods, but no such extension shall be for a period exceeding 6 months. 15

“(5) The provisions of section 21 of this Act shall apply with necessary modifications to an order made under this section.” 20

6. Report after investigation—(1) Section 17 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) If on completing any investigation under section 16 of this Act the Examiner is in doubt as to whether or not a trade practice is contrary to the public interest, he may in his discretion report that fact to the Commission and furnish to the Commission a report showing— 25

“(a) The nature of the trade practice: 30

“(b) The person or persons who have carried it on or are carrying it on:

“(c) Such other matters as the Examiner considers relevant;—

and the Commission may conduct an inquiry into the matter under section 18 of this Act.” 35

(2) Section 17 of the principal Act is hereby further amended by inserting in subsection (3), after the words “subsection (1)”, the words “or subsection (1A)”.

(3) Section 18 of the principal Act is hereby amended by inserting in subsection (1), before the words “section 17”, the words “subsection (1) of”. 40

7. Approval of collective pricing agreements—The principal Act is hereby further amended by inserting in Part III, after section 18, the following section:

5 “18A. (1) Any wholesaler, retailer, or contractor who is a party to any agreement or arrangement of any of the kinds specified in paragraphs (b) to (d) of subsection (2) of section 19 of this Act entered into before the commencement of this section or proposed to be entered into after the commencement of this section, or any trade association by which any such
10 agreement or arrangement has been entered into or is proposed to be entered into, may apply to the Commission for its approval to that agreement or arrangement.

“ (2) As soon as conveniently may be after the receipt of an application under this section, the Commission shall fix a
15 time and place for the holding of an inquiry into the application, and shall give notice thereof to the Examiner and to the applicant and all other parties to the agreement or arrangement or proposed agreement or arrangement:

“ Provided that where the application is made by a trade
20 association it shall not be necessary to give that notice to the members of the association.

“ (3) A copy of the application shall be supplied to the Examiner, who shall furnish to the Commission his report thereon and his recommendation as to the nature of the order
25 which he considers the Commission should make on the application.

“ (4) The provisions of subsections (2) to (6) of section 18 of this Act shall apply with respect to any inquiry under this section as if it were an inquiry under the said section 18.

30 “ (5) Where at an inquiry under this section the applicant satisfies the Commission that the agreement or arrangement or proposed agreement or arrangement is not contrary to the public interest, the Commission may grant its approval to the agreement or arrangement. Any such approval may be subject
35 to such conditions as the Commission thinks fit.

“ (6) On application to the Commission made by the Examiner or by the person on whose application the approval was granted, the Commission may at any time—

40 “ (a) Revoke any approval granted under this section:
“ (b) Alter or revoke any conditions subject to which any such approval was granted or impose new or additional conditions.

45 “ (7) The procedure on any application under subsection (6) of this section shall be the same, with the necessary modifications, as in the case of an application for approval made under subsection (1) of this section.”

8. Notification of trade practice—The principal Act is hereby further amended by inserting in Part III, after section 18A (as inserted by section 7 of this Act), the following section:

“18B. (1) If the Examiner has reasonable cause to believe that persons engaged in any particular trade or industry are parties to a trade practice within one or more of the categories referred to in subsection (2) of section 19 of this Act, he may apply to the Commission for an order requiring those persons to furnish to the Examiner the following particulars in respect of any such trade practice: 5 10

“(a) The names of the persons who are parties to the trade practice; and

“(b) The whole of the terms of the trade practice.

“(2) As soon as conveniently may be after the receipt of an application for order under this section, the Commission shall fix a time and place for the hearing of the application and shall give notice thereof to the Examiner and to any person believed to be engaged in carrying on the trade practice. 15 20

“(3) At the hearing of the application the Commission shall hear the representations made by the Examiner and any persons carrying on the trade practice.

“(4) In its determination of an application made under this section, the Commission may refuse to grant an order or may grant an order subject to such conditions as may be prescribed in the order. 25

“(5) If any person who furnishes or is required to furnish any particulars, documents, or information under this section—

“(a) Makes any statement, or furnishes any document which he knows to be false in a material particular; or 30

“(b) Wilfully alters, suppresses, or destroys, any document which he is required to furnish as aforesaid,— he commits an offence against this Act.

“(6) If any person fails without reasonable excuse, proof of which excuse shall lie on him, to comply with an order made by the Commission under this section, he commits an offence against this Act.” 35

9. Orders of Commission—(1) Section 19 of the principal Act is hereby amended by repealing subsection (1) (as substituted by section 5 of the Trade Practices Amendment Act 1965), and substituting the following subsection:

5 “(1) Subject to the provisions of this Act, where the Commission after either holding an inquiry or dispensing with an inquiry under Part III of this Act is of the opinion that the continuance or repetition of any trade practice would be contrary to the public interest, the Commission may make
10 an order, —

“(a) Directing the discontinuance or prohibiting the repetition of the practice; or

“(b) Permitting the continuance or repetition of the practice subject to such conditions as may be
15 specified in the order; or

“(c) Directing the discontinuance or prohibiting the repetition of the practice and directing (in either case) that in order to remove in whole or in part the consequences of the practice the person carrying on
20 the practice shall revert to the trading conditions, including prices, existing before the trade practice was entered into.”

(2) Section 5 of the Trade Practices Amendment Act 1965 is hereby consequentially repealed.

25 **10. Unjustifiable refusal by wholesaler to supply goods to a retailer**—Section 19 of the principal Act is hereby further amended by inserting in subsection (2), after paragraph (i), the following paragraph:

30 “(ii) Any unjustifiable refusal by a wholesaler to sell or supply goods to a retailer at prices and on terms and conditions normally extended to retailers generally:”.

11. Trade practices deemed contrary to the public interest
—Section 20 of the principal Act (as amended by section 6 of
35 the Trade Practices Amendment Act 1965) is hereby further amended by omitting from paragraph (d) of subsection (1) the words “goods; or”, and substituting the words “goods; and, in determining under this paragraph whether or not a trade practice is contrary to the public interest, the Commission shall be guided by the principle that competition is
40 desirable and that, until the contrary is proved, any reduction or limitation of competition, whether in prices or otherwise, is unreasonable; or”.

12. Collective pricing without prior approval of Commission—The principal Act is hereby further amended by inserting, after section 23B (as inserted by section 7 of the Trade Practices Amendment Act 1965), the following section:

“23BB. (1) It shall be an offence against this Act for any two or more persons, being either wholesalers or retailers or contractors or members of a combination of persons engaged in the selling of goods or the performance of services, or for any trade association—

“(a) To enter into any agreement or arrangement to sell goods or perform services only at prices or upon terms agreed upon between parties to any such agreement or arrangement, unless before the agreement or arrangement was entered into it was approved by the Commission under section 18A of this Act and all conditions imposed by the Commission in granting that approval (including any conditions altered or added or substituted pursuant to subsection (6) of that section) were complied with; or

“(b) To continue after the 1st day of April 1971 to be a party to or to give effect to any such agreement or arrangement entered into before the commencement of this section, unless before that date the agreement or arrangement was approved by the Commission under section 18A of this Act and all conditions imposed by the Commission in granting that approval (including any conditions altered or added or substituted pursuant to subsection (6) of that section) were complied with.

“(2) If before the 1st day of April 1971 application for the approval by the Commission of any agreement or arrangement entered into before the commencement of this section has been made, but—

“(a) The application has not been determined before that date; or

“(b) Any appeal to the Administrative Division of the Supreme Court from the decision of the Commission on the application, and any appeal to the Court of Appeal from the decision of the Administrative Division, have not been determined before that date,—

then, notwithstanding anything in paragraph (b) of sub-section (1) of this section, the provisions of that paragraph shall have effect as if for the words 'the 1st day of April 1971' there were substituted a reference to the date on which notice

- 5 of the decision of the Commission on the application or, as the case may be, the decision of the Administrative Division or of the Court of Appeal is given to the applicant by the Secretary to the Commission.
- 10 “(3) Nothing in this section shall apply with respect to any agreement or arrangement fixing any scale of fees or charges where under the provisions of any Act that scale has been fixed or approved by the Governor-General or the Governor-General in Council or any Minister of the Crown or by any other person or body authorised by that Act to fix or approve
- 15 that scale.”

- 13. Penalties for collective tendering, collective bidding, and collective pricing—**(1) The principal Act is hereby further amended by repealing section 23c (as inserted by section 7 of the Trade Practices Amendment Act 1965), and
- 20 substituting the following section:

“23c. Every person who commits, or attempts to commit, or does any act with intent to commit any offence under this Part of this Act is liable on summary conviction—

- 25 “(a) In the case of an individual, to a fine not exceeding \$1,000:
- “(b) In the case of a company or other corporation, to a fine not exceeding \$5,000.”

- 14. New sections substituted as to appeals—**The principal Act is hereby further amended by repealing sections 24 to 36, and substituting the following sections:
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- “**24. Appeals from decisions of Commission—**(1) Subject to sections 25 and 26 of this Act, there shall be a right of appeal to the Administrative Division of the Supreme Court (in this Part, unless the context otherwise requires, referred to as the Court) against a decision of the Commission in respect
- 35 of any of the matters specified in section 25 of this Act.

“(2) Every such appeal shall be made by giving notice of appeal within 28 days after the date of the publication in the *Gazette* of the order appealed against.

- 40 “(3) It shall not be necessary to state in the notice the grounds of appeal.

“(4) Subject to the provisions of this Part, the procedure in respect of any such appeal shall be in accordance with the rules of Court.

“25. **Matters on which appeals lie**—(1) The right of appeal under section 24 of this Act shall be from the whole or any part of any order of the Commission made under section 18A or section 19 of this Act. 5

“(2) No appeal shall lie against any order of the Commission made under section 9 of this Act.

“26. **Persons entitled to appeal**—The following persons and no others may exercise such right of appeal as aforesaid: 10

“(a) The applicant for an order by the Commission under section 18A of this Act approving an agreement or arrangement or a proposed agreement or arrangement where the Commission has refused the application or has granted its approval subject to conditions: 15

“(b) The person on whose application the Commission has under section 18A of this Act approved an agreement or arrangement or a proposed agreement or arrangement, where— 20

“(i) Under subsection (6) of that section the Commission has revoked its approval; or

“(ii) Under the said subsection (6), the Commission has altered any conditions subject to which its approval was granted or has imposed new or additional conditions; or 25

“(iii) The Commission has refused an application made by that person under the said subsection (6) for the alteration or revocation of any conditions subject to which its approval was granted: 30

“(c) Any person who by an order made under section 19 of this Act—

“(i) Is directed to discontinue or not to repeat any trade practice; or 35

“(ii) Is permitted to continue or repeat a trade practice subject to conditions prescribed by the order; or

“(iii) Is directed to discontinue any trade practice or not to repeat any trade practice and (in either case) to revert to any trade practice that was formerly carried on by him: 40

“(d) Where any order referred to in paragraph (c) of this section is directed to a class of persons, any person belonging to that class or representing that class.

5 **“27. Hearing and determination of appeal—**(1) The Court may in any case, if it considers it is in the interests of the parties or of any of them and is not contrary to the interests of other persons concerned, order that the hearing or any part of it shall be held in private.

10 “(2) The Court may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any appeal before it (whether heard in public or in private) ; but no such order shall be made prohibiting the publication of the names and descriptions of the parties to the appeal, or of any decision of the Court.

15 “(3) In its determination of any appeal, the Court may confirm, modify, or reverse the order or decision appealed against, or any part of that order or decision, and, subject to section 31 of this Act, the decision of the Court shall be final and conclusive.

20 **“28. Court may refer appeals back for reconsideration—**(1) Notwithstanding anything in section 27 of this Act, the Court may in any case, instead of determining any appeal under that section, direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or
25 any specified part of the matter to which the appeal relates.

“ (2) In giving any direction under this section, the Court shall—

“ (a) Advise the Commission of its reasons for so doing; and

30 “(b) Give to the Commission such directions as it thinks just as to the rehearing or reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

“ (3) In reconsidering the matter so referred back, the Commission shall have regard to the Court’s reasons for giving
35 a direction under subsection (1) of this section and to the Court’s directions under subsection (2) of this section.

40 **“29. Appeal by Examiner on question of law—**(1) Subject to subsection (2) of this section, where the Examiner is dissatisfied with any decision of the Commission as being erroneous in point of law, he may appeal to the Court by way of case stated for the opinion of the Court on a question of law only.

“(2) The right of appeal under subsection (1) of this section shall be on a point of law arising in—

“(a) Any decision of the Commission under section 18A of this Act—

“(i) Approving an agreement or arrangement or a proposed agreement or arrangement; or 5

“(ii) Refusing an application by the Examiner to revoke any such approval; or

“(iii) Altering any conditions subject to which any such approval was granted or imposing new or additional conditions; or 10

“(iv) Refusing an application by the Examiner to alter any such conditions or to impose new or additional conditions:

“(b) Any decision of the Commission making an order under section 19 of this Act or refusing to make such an order. 15

“(3) The provisions of Part IV of the Summary Proceedings Act 1957 (except sections 113, 114, 124 to 128, 132, and 134 to 144), so far as they relate to appeals by way of case stated on a question of law only, shall apply, so far as they are applicable and with the necessary modifications, to every appeal under this section. In the application of those provisions, they shall be read as if— 20

“(a) Every reference to a Magistrate’s Court were a reference to the Commission: 25

“(b) Every reference to a Magistrate or Justice or Justices were a reference to the Chairman of the Commission:

“(c) Every reference to the Registrar of the Magistrate’s Court were a reference to the Secretary to the Commission: 30

“(d) Every reference to a registry of the Supreme Court or to the Registrar of the Supreme Court were a reference to the registry of the Supreme Court at Wellington or, as the case may be, to the Registrar of that Court at Wellington: 35

“(e) Every reference to the respondent were a reference to each of the other parties to the proceedings before the Commission. 40

“(4) Subject to this section, the procedure in respect of any appeal under this section shall be in accordance with the rules of Court.

“(5) No appeal shall lie under this section on a point of law arising in any decision of the Commission made under section 9 of this Act. 45

“30. **Provisions pending determination of appeal**—Pending the determination of any appeal to the Administrative Division of the Supreme Court under this Part, the order or other decision appealed against shall be deemed to have no
5 effect.

“31. **Appeal against decision of Administrative Division on question of law**—(1) If any party to any proceedings before the Administrative Division of the Supreme Court under this Part is dissatisfied with any determination or decision of the
10 Court in the proceedings as being erroneous in point of law, he may, with the leave of that Division, appeal to the Court of Appeal by way of case stated for the opinion of that Court on a question of law only:

“Provided that if the Administrative Division refuses to
15 grant leave to appeal to the Court of Appeal, the Court of Appeal may grant special leave to appeal.

“(2) Within 14 days after the date of the determination or decision of the Administrative Division, a party desiring to appeal to the Court of Appeal under this section shall
20 file a notice of his application for leave to appeal with the Registrar of the Supreme Court at Wellington, and shall forthwith deliver or post a copy of the notice to every other party to the proceedings.

“(3) The Administrative Division may grant leave accord-
25 ingly if in its opinion the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.

“(4) Where the Administrative Division refuses leave to
30 any party to appeal to the Court of Appeal under this section, that party may, within 21 days after that refusal, or within such further time as the Court of Appeal may allow, apply to the Court of Appeal, in such manner as may be directed by the rules of that Court, for special leave to appeal
35 to that Court, and the Court of Appeal may grant leave accordingly if in its opinion the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.

“(5) Within 14 days after leave to appeal is granted under
40 this section, or within such further time as the Judge before whom the proceedings were heard may in his discretion allow, the appellant shall state in writing and file with the Registrar of the Supreme Court at Wellington a case setting out the

facts and the grounds of the determination or decision and specifying the question of law on which the appeal is made. The appellant shall forthwith deliver or post a copy of the case to every other party to the proceedings.

“(6) As soon as practicable after the filing of the case, the Registrar shall cause it to be submitted to the Judge before whom the proceedings were heard. 5

“(7) The Judge shall, as soon as practicable, and after hearing the parties if he considers it necessary to do so, settle the case, sign it, and cause it to be sent to the Registrar. The settling and signing of the case shall be deemed to be the statement of the case by the Court. 10

“(8) Where since the date of the determination or decision the Judge before whom the proceedings were heard has ceased to hold office as such or died or left New Zealand, or is incapable by reason of sickness or otherwise from acting as such, the case may be submitted to any Judge of the Supreme Court and may be settled and signed by him. 15

“(9) The Registrar shall send the signed case to the Registrar of the Court of Appeal, and shall make a copy available to each party. 20

“(10) If within 14 days after the granting of leave to appeal, or within such further time as may be allowed, the appellant does not file a case pursuant to subsection (5) of this section, the Judge may certify that the appeal has not been prosecuted. 25

“(11) The Supreme Court or a Judge thereof may in its or his discretion, on the application of the intending appellant, extend any time prescribed or allowed under this section for the filing of an application for leave to appeal or the stating of any case. 30

“(12) In its determination of any appeal under this section, the Court of Appeal may do any one or more of the following things:

“(a) Reverse, confirm, or amend the determination or decision in respect of which the case has been stated; or 35

“(b) Remit the matter to the Administrative Division with the opinion of the Court of Appeal thereon; or

“(c) Make such other order in relation to the matter as it thinks fit. 40

“(13) The decision of the Court of Appeal on any appeal under this section or on any application for leave to appeal shall be final.

“(14) Subject to the provisions of this section, the case shall be dealt with in accordance with rules of Court.

“(15) Where leave to appeal to the Court of Appeal is granted under this section, the decision of the Administrative
5 Division shall nevertheless have effect until the determination of the appeal, unless the Court granting such leave otherwise orders.”

15. Transitional provisions as to appeals—Every appeal to the Trade Practices Appeal Authority which before the pass-
10 ing of this Act has been forwarded to the Commission under the principal Act, and has not been determined by that Authority, shall be deemed to have been made to the Supreme Court and shall be heard and determined by the Administra-
15 tive Division of that Court pursuant to section 24 of the principal Act (as substituted by section 14 of this Act):

Provided that any such appeal which before the passing of this Act has been wholly or partly heard but has not been determined shall be determined as if this Act had not been passed.

20 **16. Proceedings before Commission not to be held bad for want of form**—The principal Act is hereby further amended by repealing section 23, and substituting the following section:
“23. Proceedings before the Commission shall not be held bad for want of form.”

25 **17. Case may be stated for Administrative Division of Supreme Court**—The principal Act is hereby further amended by repealing section 38, and substituting the following section:

30 “38. The Chairman of the Commission in any matter before the Commission may state a case for the opinion of the Supreme Court on any question of law arising in that matter. Every such case stated shall be heard and determined by the Administrative Division of the Court.”

18. Act to apply to services as well as to goods—The prin-
35 cipal Act is hereby further amended by repealing section 39, and substituting the following section:

“39. (1) All the provisions of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to the performance of services and the refusal

to supply services (otherwise, in each case, than pursuant to a contract of service between master and servant) and the rates or fees charged therefor and the costs of providing the services in the same manner as they apply in respect of the sale of goods and the refusal to sell goods and the prices charged for goods and the costs of the production, manufacture, transport, storage, and distribution of goods. 5

“(2) Without limiting the generality of the meaning of the expression ‘performance of services’ in subsection (1) of this section, that expression includes the doing of any thing pursuant to a contract or agreement with any person which confers any right or benefit on that person or any other person.” 10

19. Time for laying informations—The principal Act is hereby further amended by inserting, after section 42, the following section: 15

“42A. Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information for an offence against this Act may be laid at any time within 2 years from the time when the matter of the information arose.” 20