



ANALYSIS

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1966, No.6

An Act to make provision for the control of prices so as to prevent any exploitation of the public

(1 November 1966.)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session, assembled and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Control of Prices Act 1966.

2. Interpretation - In this Act, unless the context otherwise requires -

"Books or documents" includes accounts, balance sheets, vouchers, records, contracts and other instruments.

"The Constitution" means the Constitution of the Cook Islands (as set out in the second schedule to the Cook Islands Amendment Act 1965 of the Parliament of New Zealand).

"Control of Prices Emergency Regulations" means the Control of Prices Emergency Regulations 1939 (1939/275) as applied to the Cook Islands by the Cook Islands Applied Regulations Order 1947 (1947/189) and amendments thereto and includes any amendments to the Control of Prices Emergency Regulations 1939 so applied.

"Financial Secretary" means the officer for the time being in charge of the Department of Treasury in the Cook Islands and includes any officer of the Cook Islands Public Service who executes the office of Financial Secretary during any vacancy in that office or during the absence or incapacity of the holder of that office to perform or exercise on his behalf or in his stead any functions, powers, or duties conferred or imposed on the Financial Secretary by the provisions of this Act.

- "Gazette" means the Gazette published or purporting to be published by authority of the Government of the Cook Islands, and includes any supplement thereof published as aforesaid in any place.
- "High Commissioner" means the High Commissioner appointed under Article 3 of the Constitution.
- "High Court" means the High Court of the Cook Islands established under Part IV of the Constitution.
- "Member" means a member of the Price Tribunal.
- "Minister" means the Minister of Finance appointed under Article 13 of the Constitution.
- "Price" in relation to the sale of any goods or to the performance of any services includes every valuable consideration whether direct or in any way indirect, or demanded or received at a later date.
- "Price Order" means a price order made under this Act.
- "Public Notification" and "Public Notice":
"Public notification" and "publicly notify" in relation to any act, matter or thing required to be publicly notified means the making of the act, matter or thing generally known in the Cook Islands by any practicable or customary means, whether in addition to publication in the Gazette or not, and "public notice" means a notice so notified.
- "Retailer" means a trader who sells goods to a consumer.
- "Sale" includes barter and every other disposition for valuable consideration.
- "Services" means any services supplied or performed for hire or reward by any person engaged in trade or business otherwise than pursuant to a contract of service between master and servant.
- "Shop" means any place in which goods are kept, exposed or offered for sale to the consumer.
- "Trade" means any trade, business, industry, profession, occupation or undertaking relating to the sale of goods and "Trader" and "To Trade" have a corresponding meaning.
- "Trade practice" means any practice or action related to the carrying on of any trade.
- "Wholesaler" in relation to the sale of any goods means a person who sells such goods to any person for the purpose of resale.

3. Financial Secretary to Administer Act - The Financial Secretary shall be charged with the administration of this Act under the general direction and control of the Minister.

PART I. - THE TRIBUNAL

4. Price tribunal established - For the purposes of this Act there shall be a Tribunal, to be known as the Price Tribunal, which shall be deemed to be the same Tribunal as the Price Tribunal established by the Control of Prices Emergency Regulations.

5. Constitution of tribunal - The Tribunal shall consist of -

- (a) The Financial Secretary, who shall be the President;
- (b) Two or more appointed members, namely -
 - (i) One or more ordinary members, and
 - (ii) One or more associate members.

6. Appointment and term of office of appointed members - (1) All appointed members shall be appointed by the Minister and shall hold office during the pleasure of the Minister.

(2) The term of office of any member appointed under the Control of Prices Regulations shall be deemed to be terminated on the coming into force of this Act but any such member may be reappointed under this Act.

(3) Every appointed member may at any time resign his office by writing addressed to the Minister.

7. Associate members - (1) No person shall be appointed as an associate member unless he is in the opinion of the Minister possessed of expert knowledge of some branch of trade or industry.

(2) Any appointed member who is not specifically appointed as an associate member shall be deemed to be an ordinary member.

8. Fees and allowances payable to appointed members - Appointed members other than persons employed in the Cook Islands Public Service or persons in receipt of salary payable out of the Cook Islands public revenues shall receive for the attendance at sittings of the Tribunal or for the performance of any other duty under this Act such fees and allowances as the Minister may from time to time determine.

9. Secrecy to be maintained - Every member and every person engaged or employed in connection with the work of the Tribunal shall maintain the secrecy of all matters relating to that work which come to his knowledge.

10. Seal of tribunal - The Tribunal shall have a seal which shall be judicially noticed in all Courts.

11. Procedure of tribunal - (1) No sitting of the Tribunal shall be held unless the President and at least one ordinary member are present.

(2) Any associate member may, with the concurrence of the President, be present and exercise his rights as a member at any sitting of the Tribunal and shall be so present and exercise his rights as a member when requested by the President.

(3) The President shall preside at every sitting of the Tribunal.

(4) If at any sitting of the Tribunal the President and one ordinary member only are present, both the President and that member shall concur in every decision of the Tribunal; in every other case a decision of a majority of the persons present shall be the decision of the Tribunal, and in the event of an equality of votes the President shall have a casting vote.

(5) Every sitting of the Tribunal shall be held in public:

Provided that the Tribunal may -

- (a) Deliberate in private as to its decision in any case or as to any question arising in the course of any proceedings;
- (b) Make an order directing that any case or any class of cases be heard in private, either as to the whole or any portion thereof;
- (c) Make an order prohibiting the publication of any report or account of the evidence or other proceedings in any case (whether heard in public or in private), either as to the whole or any portion thereof.

(6) Any order made by the Tribunal under this Act shall be signed by the President and at least one ordinary member and the seal shall be affixed to any such order.

(7) Any request made or direction given by the Tribunal under or for the purposes of Part II of this Act shall be deemed to be sufficiently made if it is in writing signed by the President or by any ordinary member authorized in that behalf.

(8) Subject to the provisions of this Act, the Tribunal may regulate its procedure in such manner as it thinks fit.

12. Office of tribunal - The office of the Financial Secretary shall be deemed to be the office of the Tribunal.

13. Registers and secretarial services - The Financial Secretary shall -

- (a) Establish and keep such registers and records as may be required for the administration of this Act;
- (b) Make available to the Tribunal such secretarial services and other facilities as may be required for the exercise of the functions of the Tribunal under this Act.

PART II - FUNCTIONS, DUTIES, AND POWERS
OF TRIBUNAL

14. Functions and Duties of Tribunal - The general functions and duties of the Tribunal shall be -

- (a) To fix prices for goods and services as provided in this Act;
- (b) To investigate any complaints made or referred to the Tribunal with respect to trade practices or the prices charged for goods or services;
- (c) To keep under review trade practices and the prices of goods and services, to institute proceedings for offences under this Act, and to take such other steps as in its opinion may be necessary to prevent the exploitation of the public.

15. Powers of tribunal - The Tribunal shall have the powers specifically conferred on it by the provisions of this Act and all other powers and authorities reasonably necessary for and incidental or conducive to the effective performance of its functions and duties.

16. Price Orders - (1) Subject to the provisions of section 17 of this Act, ("Goods not subject to Price Orders") the Tribunal may from time to time make orders (in this Act referred to as price orders) fixing, in such manner as it thinks fit, the actual or the maximum or the minimum prices that may be charged or received for any goods to which the order relates, or fixing the amounts or percentage by which in respect of such goods selling prices may exceed prices specified in the order.

(2) Different prices or amounts or percentages as aforesaid may be fixed for goods of the same kind or class in respect of sales by wholesalers or retailers respectively, in respect of different quantities, qualities or grades of such goods, in respect of different forms, modes, or conditions of sale or delivery of such goods, or having regard to any other circumstances which, in the opinion of the Tribunal, are relevant to any determination of the Tribunal under this section.

(3) In any price order such conditions, not inconsistent with this Act may be included as the Tribunal thinks necessary or desirable for the proper administration of the order or to ensure compliance with the terms thereof.

(4) Any price order may be of general application throughout the Cook Islands or may be limited in its application to any specified locality or island or specified localities or islands or to localities or islands of a specified class. If the order is not expressed to be limited to any locality or island or localities or islands, it shall be deemed to have been given in respect of the whole of the Cook Islands.

(5) Every price order shall be publicly notified.

(6) Every price order shall state the date of its coming into force and that date may be the date of the public notification or a later date specified in the order.

(7) Every price order may in like manner be amended from time to time, or revoked at any time.

(8) On and after the expiration of fourteen days from the date of the coming into force of a price order fixing or amending the retail price of any goods every retailer who sells goods to which the order relates, shall keep a copy of the order or the relevant part thereof conspicuously displayed in his shop showing clearly for the information of the public the retail price fixed for such goods.

17. Goods not subject to price orders (1) The Minister may from time to time by public notice in the Gazette issue a list of exempted goods.

(2) As long as any such notice is in force, it shall not be lawful for the Tribunal to make price orders in respect of any goods specified in the notice and any price order previously made in respect of any goods specified in the notice shall forthwith be revoked by the Tribunal.

(3) Any such notice may in like manner be amended from time to time or revoked at any time.

(4) The Minister shall not issue, amend, or revoke any notice under this section without first having sought from the Tribunal a report and recommendation on the proposed notice, and the Tribunal, when it is of the opinion (on receipt of complaints or otherwise) that any notice under this section requires to be issued, amended, or revoked shall make representations to the Minister to that effect.

18. Inquiries and investigations - (1) In the exercise of its functions the Tribunal may hold such inquiries or may conduct such investigations as it thinks fit.

(2) At any such inquiry the Tribunal may admit evidence of any kind and hear evidence on oath and may, by order summon any person to appear before it and to give evidence as to the subject-matter of the inquiry, and may require any witness to produce to the Tribunal any books or documents in his possession or control relative to the subject-matter of the inquiry.

(3) Such reasonable amount in respect of expenses and loss of time as the Tribunal deems fit to award shall be paid to any witness giving evidence before the Tribunal.

19. Power to inspect and to enter - For the purposes of any inquiry or investigation under this section, any member or other person authorised in that behalf by writing under the seal of the Tribunal may -

- (a) Inspect, examine, and audit any books or documents;
- (b) Request 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;
- (c) Request any person to furnish in any specified form and, if the Tribunal thinks fit, verified by statutory declaration, any information that may be required by the Tribunal;
- (d) Enter upon and search any place used or reasonably supposed to be used for the manufacture or storage of goods intended for sale and may inspect and take records of any stocks of goods found in such place, and may, on payment or tender of a reasonable price, take samples of any goods so found.

20. Power to require returns - The Tribunal may from time to time request any person engaged in the manufacture, distribution, or sale of any goods to furnish, within a specified time and, if the Tribunal thinks fit, verified by statutory declaration, returns setting forth the cost price of such goods to the person making the return and any such further particulars in relation to such goods, prices, or conditions of sale as the Tribunal may require in order to determine whether or not the price charged or, in the case of newly introduced lines of goods, the price proposed to be charged for such goods by the seller is fair and reasonable.

21. Power to order display of retail price (Ticketing of Goods) - (1) The Tribunal may in respect of specified goods from time to time order that every retailer who offers or exposes for sale such goods shall cause the same to show in legible and conspicuous characters the actual retail price of the goods or the retail price per weight or measure, whichever is appropriate, by marking any such goods or placing a ticket, placard, or label in close proximity to any such goods.

(2) Any order under this section may be included in a price order issued in respect of such goods.

(3) Where an order under this section is not included in any relevant price order, or where no relevant price order is in force, the provisions of subsections (5), (6) and (7) of section 16 of this Act (relating to public notification, coming into force, and amendments or revocation of a price order) shall apply with the necessary modifications.

(4) The provisions of this section shall, if the Tribunal so directs and subject to any modifications specified in the order apply to an itinerant trader who sells goods to a consumer.

22. Offers to sell goods - For the purposes of this Act the publication or exhibition of a price list in respect of any goods or the furnishing of a quotation for any goods, or the exposure of any goods with a specification or an indication of the price thereof attached thereto or displayed in the vicinity thereof or in connection therewith, shall be deemed to constitute an offer to sell those goods at the price so specified or indicated.

PART III - OFFENCES AND PENALTIES

23. Profiteering, black marketing, etc. - (1). Every person commits an offence against this Act who -

- (a) Sells or agrees or offers to sell any goods at a price which produces or is calculated to produce substantially more than a fair and reasonable rate of commercial profit to the person by whom or on whose behalf those goods are sold or offered to be sold ("profiteering");
- (b) Engages in any illegal traffic in goods in respect of which a price order is in force or exploits the short supply of any goods in a manner calculated to increase the price of any such goods to the ultimate buyer ("black marketing");
- (c) Being in possession of goods for the purpose of any trade destroys or hoards the goods or refuses to sell the goods or to make them available for sale, if such act or omission raises or tends to raise the cost of other similar goods to the public or who refuses to sell goods in respect of which he has made an offer to sell within the meaning of section 22 of this Act ("hoarding"); or
- (d) Sells or agrees or offers to sell any goods in respect of which a price order is in force, together with any other goods, unless the price charged for the first-mentioned goods is specified separately

or who refuses to sell any goods except on the condition that other goods (not forming part of an inseparable set) are also purchased ("illegal combination of sales"):

- (e) In order to circumvent the effect of any price order in force, sells or agrees or offers to sell goods seemingly in conformity with the terms of that price order but in fact in smaller quantities or of inferior quality or who uses any device, plan, or scheme for the purchase or sale of goods to the effect that such goods are in any other way of lesser value than the goods described in the order ("fraudulent packing");
- (f) Being a person by whom or on whose behalf a complete or partial monopoly of the importation of goods into the Cook Islands has been established, exploits such monopoly in any manner liable to increase unreasonably the prices at which goods are sold or the costs relating to, or the profits derived from, the importation, distribution, or sale of such goods ("exploitation of monopoly").

(2) Every person who commits or attempts to commit an offence against this Act under this section shall be liable on conviction, in the case of an individual, to a fine not exceeding one hundred pounds (£100) or to imprisonment for a term not exceeding three months and, in the case of a company, to a fine not exceeding five hundred pounds (£500).

(3) In addition to any penalty imposed on the conviction of any person for an offence under this section, the High Court may make an order for the forfeiture of all or any goods in respect of which the proceedings were taken and which are found to be the property of the convicted person, and any goods so forfeited shall, on forfeiture, become the property of the Crown and may be sold or otherwise disposed of as the High Court directs.

24. Breach of Price orders - (1) Every person who, while a price order is in force, sells or agrees or offers to sell any goods to which that price order relates, for a price not in conformity with the order, or who commits a breach of or fails to comply with any obligations imposed on him by any terms or conditions included in any price order pursuant to subsection (3) of section 16 of this Act, commits an offence against this Act and shall be liable on conviction, in the case of an individual, to a fine not exceeding one hundred pounds (£100) or to imprisonment for a term not exceeding one month and, in the case of a company, to a fine not exceeding five hundred pounds (£500).

(2) On the conviction of any person of an offence under this section involving the sale of any goods for a price in excess of the price fixed in the price order, the High Court, on application by or on behalf of the Tribunal, may make an order for payment by the convicted person of an amount equal to the amount charged and received in excess of the price fixed in the price order and any amount payable pursuant to an order made by the High Court under this section shall be recoverable in the same manner as fines and costs are recoverable.

25. Default of witnesses - Every witness who, having been summoned to appear before the Tribunal for the purpose of any inquiry, fails without sufficient excuse so to appear or to take an oath or make an affirmation as a witness or to give evidence or to produce to the Tribunal any books or documents that he is required to produce, commits an offence against this Act and shall be liable on conviction to a fine not exceeding one hundred pounds (£100) or to imprisonment for a term not exceeding one month.

26. Other offences - (1) Every person commits an offence against this Act, who -

- (a) Being a retailer to whom the provisions of subsection (8) of section 16 of this Act apply, fails to keep a copy of a price order or part thereof displayed as required by those provisions; or
- (b) Being a person who is under a duty to comply with an order made pursuant to section 21 of this Act, fails to mark goods or to indicate the price of goods as required by the terms of any such order; or
- (c) Publishes any report or other matter which the Tribunal pursuant to paragraph (c) of subsection (5) of section 11 of this Act has ordered not to be published; or
- (d) Fails to comply with any direction or request made or given to him pursuant to the provisions of this Act by the Tribunal or any person acting on behalf and under the authority of the Tribunal; or
- (e) Deceives or attempts to deceive the Tribunal or any such person as aforesaid; or
- (f) Makes any false or misleading statement or any material omission in any information, return, or report to the Tribunal or any such person as aforesaid; or
- (g) Wilfully obstructs, hinders, or resists any person in the exercise or execution of any power, duty, or function conferred or imposed on such person by any provisions of this Act; or

- (h) Acts in contravention of or fails to comply with any duty or obligation imposed on him by the provisions of this Act (other than the circumventions, duties and obligations specifically dealt with in the foregoing provisions of this Part of this Act); or
- (1) Does or omits, or causes or knowingly permits or suffers to be done or omitted any act, matter, or thing contrary to the provisions of this Act (other than the acts, matters, or things specifically dealt with in the foregoing provisions of this Part of this Act).

(2) Every person who commits or attempts to commit an offence against this Act under this section shall be liable on conviction, in the case of an individual, to a fine not exceeding twenty pounds (£20) and, in the case of a company, to a fine not exceeding one hundred pounds (£100).

27. Offences committed by companies - Where any offence under this Act is committed by any company every person engaged in the management of that company and responsible for the act or omission constituting the offence, shall also be guilty of an offence and an information may be laid against the company or any such person or both and the High Court may convict and sentence the company or any such person or both accordingly.

PART V - MISCELLANEOUS

28. Application of Act to services - All the provisions of this Act shall, so far as applicable and with the necessary modifications, apply with respect to the performance of services and to the rates or fees charged therefor in the same manner as they apply with respect to the sale of goods and the prices charged for goods.

29. Application of Act to hire purchase agreements - (1) All the provisions of this Act shall, so far as applicable and with the necessary modifications, apply with respect to any agreement (hereinafter referred to as hire purchase agreement) whereby goods are let or hired with an option of purchase, or goods are purchased by instalments (whether the agreement describes the instalments as such, or as rent or hire or otherwise howsoever).

(2) The disposition of any goods by a hire purchase agreement shall be deemed for the purposes of this Act to be a sale of those goods from the vendor to the purchaser on the date on which possession of the goods is delivered to the purchaser or his assignee.

30. Delegation of powers of Tribunal - (1) With the written consent of the Minister, the Tribunal may from time to time, by notice in writing, either generally or particularly, delegate to the Financial Secretary or any other person approved in that behalf by the Minister all or any of the powers exercisable by it under this Act including this present power of delegation and the power to make price orders.

(2) Subject to any general or special directions given on conditions attached by the Tribunal, the Financial Secretary may exercise any powers that are delegated under this section in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Whenever the Financial Secretary purports to exercise any power of the Tribunal he shall be deemed in the absence of proof to the contrary to be acting in accordance with the terms of a delegation under this section.

(4) Any delegation under this section may be at any time in like manner amended or revoked and no such delegation shall prevent the exercise of any power by the Tribunal.

(5) Any person directly or indirectly affected by any act or decision of the Financial Secretary acting pursuant to a delegation under this section may at any time appeal therefrom to the Tribunal by giving to the Financial Secretary a written notice of appeal.

(6) The Tribunal may determine any appeal under this section in such manner as it thinks fit, but, unless the Tribunal otherwise orders the act or decision appealed from shall remain in full force pending the determination of the appeal.

(7) For the purposes of this section the term "Financial Secretary" includes any person to whom the powers of the Tribunal are delegated in accordance with this section.

31. Books and accounts to be kept - Every person carrying on any business which includes the production, manufacture, sale, or supply of any goods shall, for the purposes of this Act, keep proper books and accounts and costing records (including any that may be specifically required by the Tribunal), and except as otherwise authorised in writing by the Tribunal shall preserve such books and accounts and costing records, including all invoices and copies of invoices, and all vouchers, agreements, correspondence, cables, telegrams, and other documents relating to his purchases, costs, and sales.

32. Freight charges - Where the seller of any goods has been authorised by the Tribunal, in or for the purposes of any price order to take any freight charges into account in ascertaining the selling price or the maximum selling price of any goods the maximum amount that may be taken into account in respect of such charges shall, in case of dispute, be provisionally fixed by the Tribunal and in any proceedings where the amount of such freight charges is in issue the burden of proving that the actual freight charges exceeded the amount provisionally fixed by the Tribunal shall be on the defendant.

33. Notices - Any notice given by the Tribunal under or for the purposes of this Act shall be deemed to be sufficiently given if it is in writing signed by one or more members of the Tribunal or by any person purporting to act by direction of the Tribunal, and is delivered or posted to the person or persons primarily concerned therewith, or to any person or organisation deemed by the Tribunal to represent the person or persons primarily concerned.

34. Repeals and Savings - (1) On the coming into force of this Act the Cook Islands Applied Regulations Order 1947 (1947/189) as amended by the Cook Islands Applied Regulations Order 1947, Amendment No.2 (1953/132) shall cease to have any force or effect in the Cook Islands so far as it relates to the Control of Prices Emergency Regulations 1939 (1939/275).

(2) Section fourteen of the Cook Islands Amendment Act 1921 is hereby repealed.

(3) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that -

(a) All price orders and other orders, directions, exemptions, findings, registers, records, instruments, and generally all acts of authority originated under the Regulations specified in subsection (1) and the enactment specified in subsection (2) of this section and subsisting or in force at the coming into force of this Act, shall ensure for the purposes of this Act as fully and effectually as if they had originated under this Act and accordingly shall, where necessary, be deemed to have so originated;

(b) All matters, things, and proceedings which have been commenced under the Regulations and enactment specified in subsections (1) and (2) of this section and which are pending or in progress on the coming into force of this Act, may be continued and completed under this Act.

35. Application of fines and other moneys - All fines and other moneys paid and collected pursuant to the provisions of this Act shall form part of the public revenues of the Cook Islands and shall be paid into the appropriate account thereof.