



ANALYSIS

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2. Office of the Tribunal - Section 12 of the principal Act is hereby repealed and the following section substituted:-

"12: The Office of the Tribunal shall be at such place as may be determined by the Minister."

3. New Sections inserted in principal Act - The principal Act is hereby further amended by inserting after section 22 the following new sections:-

"22A. Trade practices - (1) At any inquiry under this section the Tribunal shall determine -

(a) Whether or not the trade practice complained of or some other trade practice of substantially the same nature, does in fact exist; and if so

(b) Whether or not the effect of the trade practice is or would be contrary to the public interest.

(2) For the purposes of this section, a trade practice shall be deemed to be contrary to the public interest only if, in the opinion of the Tribunal, the effect of the practice is or would be -

(a) To increase unreasonably the costs relating to the production, manufacture, transport, storage or distribution of goods; or

(b) To increase unreasonably the prices at which goods are sold; or

(c) To increase unreasonably the profits derived from the production, manufacture, distribution, transport, storage or sale of goods; or

(d) To prevent or unreasonably reduce or limit competition in the production, manufacture, supply, transportation, storage, sale, or purchase of any goods; or

(e) To limit or prevent the supply of goods to customers.

22B. Orders in regard to trade practices -

(1) Subject to the provisions of section 22A of this Act, the Tribunal may make an order (in this Act referred to as trade practice restriction orders) where it is of the opinion that the continuance or repetition of any trade practice would be contrary to the public interest and such order may order the discontinuance or non-repetition of any trade practice or permitting its continuance or repetition subject to such conditions as may be prescribed in the order.

(2) No order shall be made under this section unless the trade practice concerned is, in the opinion of the Tribunal substantially within one or more of the following categories:

- (a) Any agreement or arrangement between wholesalers to restrict by any method the class or number of buyers to whom they sell;
- (b) Any agreement or arrangement between any two or more retailers to restrict by any method the class or number of wholesalers from whom they buy;
- (c) Any agreement between wholesalers or retailers or contractors or any combination of persons engaged in the selling of goods or the performance of services, to sell goods, or perform services, or to tender for the sale of goods, or the performance of services, only at prices or on terms agreed upon between the parties to any such agreement or arrangement;
- (d) Any agreement or arrangement between wholesalers to sell goods only on the condition that prices charged or conditions of sale by retailers shall be the prices charged or conditions of sale stipulated by those wholesalers;
- (e) Any agreement or arrangement between a wholesaler and a retailer to sell goods to the retailer only on the condition that the prices charged or conditions of sale stipulated by the wholesaler; or any agreement by any particular retailer to comply with such condition;
- (f) Any agreement or arrangement between sellers not to sell goods in any particular form or of any particular kind to buyers or any class of buyers; or any agreement or arrangement between resellers not to buy goods in any particular form or of any particular kind from sellers or any class of sellers;
- (g) Any unjustifiable refusal by a wholesaler to sell goods to a retailer;
- (h) Any complete or partial monopoly of the supply of goods in the Cook Islands or any part of the Cook Islands or any practice tending to bring about any such complete or partial monopoly;
- (i) Any agreement or arrangement between persons whether as producers, wholesalers, retailers, buyers, or others to limit or restrict the output or supply of any goods, or withhold or destroy supplies of goods;

- (j) Any practice which would constitute an offence against subsection (1) of section 23, of this Act;
- (k) The unjustifiable exclusion from any trade association of any person carrying on, or intending to carry on in good faith the trade in relation to which the association is formed;
- (3) No order shall be made under this section in respect of any agreement or arrangement between buyers relating to goods which are bought by the buyers for consumption and not for resale.
- (4) Nothing in this section shall be deemed to authorise the making of an order in respect of a trade practice authorised by any enactment.
- (5) The Tribunal may before making any order under this section permit any party so affected by the order and who has made representations regarding such, to take such steps within such time as the Tribunal allows to ensure that the trade practice is not contrary to public interest. If such is done to the satisfaction of the Tribunal, then they may consider not issuing an order.
- (6) In any order made under this section the Tribunal may make such provisions, not inconsistent with this Act, as it thinks necessary or desirable for the proper administration of the order or to ensure compliance with the terms thereof, and every person shall be deemed to have committed an offence against this Act who commits a breach of or fails to comply with any obligations imposed on him by any such provisions.
- (7) Any order made by the Tribunal under this section may be at any time amended or revoked by a subsequent order provided that all parties directly affected by the order shall be advised of such and no such amendment or revocation shall be made unless such parties have been given a full opportunity of making such representations as they think fit with respect to the amendment or revocation.
- (8) Any order made under this section by the Tribunal may be general in its application or may be limited to any particular class or traders, or to an individual trader, or to a particular class of trade practices, or to a particular trade practice, or to a particular locality.
- (9) Every order made by the Tribunal under this section shall be published in the Gazette and no such order shall come into force before it has been so published."

4. Proceedings before Tribunal not to be held had for want of form - The principal Act is hereby further amended by inserting after section 22B the following new section:-

"22C. Proceedings before the Tribunal shall not be held had for want of form. Except on the ground of lack of jurisdiction, no proceedings or decision of the Tribunal shall be liable to be challenged, reviewed, quashed, or called in question in the High Court."

5. New Part IIA inserted in principal Act - The principal Act is hereby further amended by inserting after Section 22G the following new Part:-

" PART IIA - WEIGHTS AND MEASURES

22D. Interpretation - In this part, unless the context otherwise requires -

"Inspector" means an inspector of weights and measures appointed under this Act and also includes the President;

"Mark" includes authorise, direct, cause, permit or suffer to be marked;

"Measuring Instruments" includes any instrument for measuring weight, any article or liquid as well as an instrument for ascertaining any other measurement referred to in the Schedule to this Act;

"Pack" includes authorise one, direct, cause, permit or suffer to be packed;

"Package" includes anything by means of which any article is packed for sale, or any articles are packed for sale as a single item;

"President" means the President of the Price Tribunal.

22E. Weights and measures to be used - The only denominations of weights and measures to be used in the Cook Islands shall be those specified in the Schedule to this Act.

22F. Administration - Subject to the control of the Minister this part of this Act shall be administered by the President.

22G. Appointment of inspectors - (1) There may from time to time be appointed under the provisions of the Public Service Act 1969, on the recommendation of the Minister, suitable persons to be inspectors for the purpose of ensuring compliance with this part of this Act.

(2) Any person appointed under this section may also with the approval of the Minister hold any other appointment in the Public Service.

(3) The President shall for the purposes of this part of the Act be deemed to be chief inspector.

(4) Every inspector shall be furnished with a certificate in writing of his appointment by the President and shall when performing any functions required by him under this Act shall produce such if so requested.

22K. Powers of inspectors - (1) For the purposes of this part of this Act any inspector may at all reasonable time -

- (a) Enter any building or place or stop any vehicle wherein or in connection with which weights, measures, or measuring instruments are used for trade;
- (b) Stop any person having in his possession a pack, basket, or other receptacle containing goods for sale and any weights, measures, or measuring instruments for use in connection with the sale of those goods;
- (c) Examine and test those weights, measures, or measuring instruments and, if any such weight or measure is light or otherwise unjust or if any such measuring instrument is found to be incorrect or not in accordance with this part of this Act the inspector may seize the same;
- (d) Examine and weigh or measure, or cause to be weighed or measured in the presence of the person in charge of the same, any goods kept or exposed for sale, and seize any goods in respect of which a contravention of this part of the Act has been committed.

(2) Any goods, weights, measures and measuring instruments seized under this part of the Act, shall, if the Minister directs be forfeited and shall on forfeiture become the property of Her Majesty the Queen.

22I. Inspection of scales and measuring instruments - (1) All scales and other instruments or articles used for weighing and measuring instruments shall be checked every six months by an inspector as to accuracy and a certificate in the form prescribed in the Second Schedule to this Act shall be issued where such scales or other weighing instruments or measuring instruments reach the required accuracy.

(2) Before any certificate under subsection (1) hereto is issued a fee of \$5.00 shall be paid.

(3) All fees collected under this section shall form part of the Public Revenue of the Cook Islands.

- (4) All scales and other instruments or articles used for weighing or measuring instruments if found incorrect, shall be withdrawn from use until adjusted and rechecked, unless the President agrees to their usage subject to such conditions as he approves and notes on the prescribed certificate.
- (5) For the purposes of this section, all scales or articles used for weighing purposes and measuring instruments shall be checked by an inspector as to accuracy as soon as possible after the commencement of this Act and no charge shall be made for such but a certificate in accordance with subsection (4) hereto, shall be issued.
- (6) A certificate issued under this section shall be available for public inspection and shall be placed on the weighing or measuring instrument it applies to or kept in close proximity thereto.
- (7) (a) The Minister may upon the recommendation of the President exempt certain types of measuring instruments from inspection under this section pursuant to such conditions as may be deemed fit:
(b) Any exemption given under this subsection shall be publicly notified in the Gazette.

22J. Verified weights and measures - (1)

The Minister may procure any verified standard weights and measures he deems necessary for the purposes of this Act.

(2) All such verified standard weights and measures shall be verified and stamped with the letters and figures commonly used to signify Her Majesty's name or mark together with the letters "S.W." or "S.M." (signifying "standard weight" or "standard measure") and a figure indicating the denomination of the weight or measure and may cause any such verified standard to be placed in the custody and under the control of the President.

(3) Every verified standard in the custody and control of the President shall for the purposes of this Act be deemed to be of the weight and measure it purports to be.

- (4) (a) For the payment of a fee of \$5.00 the verified standards shall be available to any person for the purpose of ascertaining by comparison therewith, the accuracy of a weight or measure in that person's possession, at such times as the President thinks fit and under his supervision:
(b) A certificate as in the form prescribed in the Third Schedule to this Act shall be issued as to accuracy:
(c) All fees collected under this section shall form part of the Public Revenues of the Cook Islands.

22K. Complying with standards - All weights and measures and measuring instruments used in the Cook Islands shall comply with the standards laid down and publicly notified by the Minister.

22L. Sale and packaging of articles - (1) For the purposes of this section an article shall be deemed to be prepacked if it is packed in advance ready for sale.

(2) A reference in this section to the weight or measure of an article shall be construed as a reference to the weight or measure of the article excluding the weight or measure of the package in which the article is contained.

(3) The provisions of this section shall not apply where any article is packed and weighed or measured in the presence of the purchaser.

(4) An article sold by weight or measure shall be sold only by reference to a unit of measurement or weight specified in schedule one of this Act.

(5) A person shall not sell an article by weight or measure other than by net weight or measure or mark a package containing any article with the words "gross weight" or words to the like or sell an article in a package so marked.

(6) (a) Where any person sells by retail an article by weight or measure he shall have at the place where the sale is made a suitable instrument certified under section 22I of this Act for weighing or measuring the article and at the request of the purchaser weigh or measure the article in the presence of the said purchaser:

(b) This subsection shall not apply to articles imported into the Cook Islands already prepacked in the exporting country and where the weight is specified thereon.

(7) A person shall not pack as a prepacked article, an article of any description unless a statement of purported weight or measure of the article is marked in clear figures on the package containing the article."

6. Branch of trade practice restriction order - The principal Act is hereby further amended by inserting after section 24 the following new section:-

"24A. Every person who acts or otherwise does anything that may be in contravention of a trade practice restriction order issued by the Tribunal, pursuant to section 22B 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 five hundred dollars or to a term of imprisonment not exceeding three months and in the case of a company, to a fine not exceeding two thousand dollars."

7. Offences under Part IIA - Weights and measures -
The principal Act is hereby further amended by inserting
after section 25 the following new section:-

"25A. (1) Every person commits an offence against this Act who wilfully obstructs, hinders or resists any Inspector in the exercise or execution of any power, duty or function conferred or imposed on such inspector by the provisions of this Act, and in the case of an individual be liable on conviction to a fine not exceeding two hundred dollars, or to a term of imprisonment not exceeding two months and in the case of a company a fine not exceeding one thousand dollars.

(2) (a) Every person commits an offence against this Act who:

- (i) at any time after any public notification under Section 22K of this Act uses in any transaction with any other person any weight or measure or measuring instrument which does not comply with the standards referred to in that section; or
- (ii) uses scales or other article used for weighing purposes or measuring instrument without having a Certificate issued under section 22I of this Act; or
- (iii) alters any certificate issued under sections 22I and 22J of this Act in any way whatsoever; or
- (iv) fails to display any certificate as required by section 22I of this Act; or
- (v) uses or intends using any weight or measure or measuring instrument which is false or unjust or below standard weight or measure or materially incorrect, having regard to the purposes for which it is or may reasonably be expected to be used; or
- (vi) sells or causes to be sold, or delivers or causes to be delivered to a purchaser anything by weight or measure short of the quantity demanded of or represented by the seller; or
- (vii) sells any prepacked article referred to in section 22L of this Act that may constitute a breach of that section.

(b) Every person who commits or attempts to commit an offence against this Act under this subsection shall be liable on conviction, in the case of an individual, to a fine not exceeding one hundred dollars and in the case of a company a fine not exceeding five hundred dollars."

8. General provision as to offences - Section 27 of the principal Act is hereby repealed and the following section instituted:-

- "27. (1) Any information for any offence against this Act shall be:
- (a) Laid within one year after the committing of the offence; and
 - (b) Issued by the President in his official name or by some person authorised in that behalf by the President in writing.
- (2) Where any offence under this Act is committed by any company every person engaged in the management of the company and responsible for the act or omission constituting the offence, shall also be guilty of an offence and any 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.
- (3) Every person who aids, abets, counsels, or procures or is in any way knowingly concerned with the committing of an offence against this Act shall be deemed to have committed an offence against this Act."

9. Act to bind the Crown - The principal Act is hereby further amended by inserting after Section 33A the following section:-

"33B. This Act shall bind the Crown and shall apply to all Departments and Agencies of the Crown."

10. Schedules - The principal Act is hereby further amended by adding the following Schedules after section 35:-

" FIRST SCHEDULE

Section 22E.

Part I - Measures of Length

YARD

- Foot, being the 1/3rd part of a yard.
 Inch, being the 1/12th part of a foot.
 Fathom, being two yards.
 Pole, being five and a half yards.
 Chain, being twenty-two yards.
 Link, being the 1/100th part of a chain.
 Mile, being one thousand seven hundred and sixty yards.

Part II - Measures of Surface

- Square yard, being the standard yard squared.
 Square foot, being the 1/9th part of a square yard.
 Square inch, being the 1/144th part of a square foot.

Perch, being thirty and a quarter square yards.

Rood, being forty perches or one thousand two hundred and ten square yards.

Acre, being four roods or four thousand eight hundred and forty square yards.

Square mile, being six hundred and forty acres.

Part III - Cubic Measures

Cubic yard, being the standard yard cubed.

Cubic foot, being the $1/27$ th part of a cubic yard.

Cubic inch, being the $1/1728$ th part of a cubic foot.

Part IV - Measures of Weight

Avoirdupois

POUND

Ounce, being the $1/16$ th part of a pound.

Dram, being the $1/16$ th part of an ounce.

Stone, being fourteen pounds.

Quarter, being twenty-eight pounds.

Hundredweight, being one hundred and twelve pounds.

Ton, being two thousand two hundred and forty pounds.

Provided that a ton of oatmeal or of flour, bran, pollard, sharps, semolina, wheatmeal, or other milled product of oats or wheat may consist of two thousand pounds.

Apothecaries' Weight

Grain, being $1/7000$ th part of the pound avoirdupois.

Scruple, being twenty grains.

Drachm, being sixty grains or three scruples.

Apothecaries' ounce, being four hundred and eighty grains or eight drachms.

Troy Weight

Grain, being $1/7000$ th part of the pound avoirdupois.

Pennyweight, being twenty-four grains.

Ounce troy, being four hundred and eighty grains or twenty pennyweights.

Part V - Capacity Measures

Gallon, being ten pounds weight of distilled water weighed in air against brass weights, with the water and air at the temperature of sixty-two degrees Fahrenheit's thermometer and the barometer at thirty inches.

Quart, being the $1/4$ th part of a gallon.

Pint, being half a quart or the $1/8$ th part of a gallon.

Gill, being the $1/4$ th part of a pint.

Fluid ounce, being the $\frac{1}{5}$ th part of a gill or the $\frac{1}{20}$ th part of a pint or the $\frac{1}{160}$ th part of a gallon.

Fluid drachm, being the $\frac{1}{8}$ th part of a fluid ounce.

Minim, being the $\frac{1}{60}$ th part of a fluid drachm.

Bushel, being eight gallons.

Part VI - Metric System
Measures of Length

Millimetre
Centimetre
Decimetre
Metre
Dekametre
Hectometre
Kilometre

Measures of Surface

Square millimetre
Square centimetre
Square decimetre
Square metre or centiare
Acre
Hectare
Square kilometre

Cubic Measure

Cubic millimetre
Cubic centimetre or millilitre
Centilitre
Decilitre
Cubic decimetre or litre
Dekalitre
Hectolitre
Cubic metre or kilolitre

SECOND SCHEDULE

Control of Prices Act 1966
(Section 221)

Six Monthly Certificates of Accuracy

1. Full Description of Weights or Measures or Measuring Instrument Examined:
2. Date Examined:
3. Owner or Hirer:
4. Address:

SECOND SCHEDULE - continued

This is to certify that the above Weights/Measures/Measuring Instrument has been examined and found to be accurate except as noted hereunder:

Dated at:

Date:

Chief Inspector

Date of Expiry of Certificate:

Comments:

Fee \$5.00 paid on Receipt No. _____ of

THIRD SCHEDULE

Control of Prices Act 1966
(Section 220)

CERTIFICATE

I, _____ Chief Inspector
of Weights and Measures do hereby certify that the _____
_____ as fully described hereunder has been
examined and found to be accurate except as noted.

Dated at

This _____ day of _____ 19 _____

Chief Inspector of Weights and Measures

DETAILS

Full Description of Weights or Measures or Measuring Instrument Examined:

Comments:

Owner or Hire:

Fee \$5.00 Paid on Receipt No. _____ of "

11. Revocation - The Cook Islands Weights and Measures Regulations 1974 (Serial No. 1954/248) are hereby revoked.

With the exception of section 15 this Act is administered in the Treasury,

Section 15 is administered by the President of the Price Tribunal.