

Trade Practices

No. 39 of 1966

An Act to amend the *Trade Practices Act 1965* for the purpose of Controlling the Operations of Shipping Conferences in relation to the Carriage of Goods by Sea from Australia to other Countries, and for related purposes.

[Assented to 27 September, 1966]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Trade Practices Act 1966*. Short title and citation.

(2.) The *Trade Practices Act 1965** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Trade Practices Act 1965–1966*.

2.—(1.) This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

* Act No. 111. 1965.

(2.) The last preceding sub-section does not affect the operation of section 2 of the Principal Act as amended by this Act.

3. Section 2 of the Principal Act is repealed and the following section inserted in its stead:—

Commence-
ment.

“ 2.—(1.) This section shall be deemed to have come into operation on the day on which the *Trade Practices Act 1966* received the Royal Assent.

“ (2.) Sections 1, 5, 8 and 106, and Parts II. and III., of this Act shall be deemed to have come into operation on the eighteenth day of December, One thousand nine hundred and sixty-five.

“ (3.) The remaining provisions of this Act, other than Part XA., shall come into operation on a date to be fixed by Proclamation as the date of commencement of those provisions.

“ (4.) Part XA. shall come into operation on a date to be fixed by Proclamation as the date of commencement of that Part.

“ (5.) References in this Act to the date of commencement of this Act shall be read as references to the date fixed in pursuance of sub-section (3.) of this section.”

Parts.

4. Section 3 of the Principal Act is amended by inserting after the words—

“ Part X.—Civil Remedies (Sections 88–90).”

the words—

“ Part XA.—Overseas Cargo Shipping.

Division 1.—Preliminary (Sections 90A–90D).

Division 2.—Filing of Conference Agreements (Sections 90E–90L).

Division 3.—Powers in relation to Conference Agreements (Sections 90M–90S).

Division 4.—Powers in relation to Individual Shipowners (Sections 90T–90W).

Division 5.—General (Sections 90X–90ZF).

Division 6.—Civil Remedies in relation to Overseas Cargo Shipping (Sections 90ZG–90ZI).”

Provisions
relating to
Australian
Industries
Preservation
Act.

5. Section 4 of the Principal Act is amended—

(a) by omitting from sub-section (1.), the word “ The ” and inserting in its stead the words “ Until the commencement of Part XA., the ”; and

(b) by inserting after sub-section (2.) the following sub-section:—

“(2A.) Upon the commencement of Part XA., the following Acts are repealed:—

Australian Industries Preservation Act 1906;
Australian Industries Preservation Act 1907;
Australian Industries Preservation Act 1909;
Australian Industries Preservation Act 1910;
Australian Industries Preservation Act 1930.”

6. Section 38 of the Principal Act is amended by adding at the end thereof the following sub-section:—

Exemptions in respect of agreements.

“(2.) Paragraph (i) of the last preceding sub-section does not have effect after the commencement of Part XA.”.

7. Section 39 of the Principal Act is amended by inserting after sub-section (3.) the following sub-section:—

Exemptions in respect of practices.

“(3A.) The last preceding sub-section does not have effect after the commencement of Part XA.”.

8. After Part X. of the Principal Act the following Part is inserted:—

“ PART XA.—OVERSEAS CARGO SHIPPING.

“ Division 1.—Preliminary.

“ 90A. In this Part, unless the contrary intention appears—

Definitions.

‘ Australian flag shipping operator ’ means—

(a) for the purposes of the making of an order under section 90N of this Act—a person who carries on, or proposes to carry on, operations by way of overseas cargo shipping between any ports between which any of the outwards cargo shipping to which the relevant conference agreement relates is carried on; or

(b) for the purposes of the making of an order under section 90U of this Act—a person who carries on, or proposes to carry on, operations by way of overseas cargo shipping between Australia and the port or ports to be specified in the order,

being a person who normally uses, or proposes normally to use, for the purposes of those operations, a ship or ships registered in Australia and no other ship, and being an Australian citizen or a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;

‘ conference agreement ’ means an agreement to which this Part applies;

- ‘ declared shipowner ’ means a shipowner in respect of whom an order under section 90U of this Act is in force;
- ‘ disapproved agreement ’ means a conference agreement in respect of which an order of disapproval under this Part is in force;
- ‘ outwards cargo shipping ’ means overseas cargo shipping commencing at a place in Australia;
- ‘ overseas cargo shipping ’ means the carriage of goods wholly or partly by sea from a place in Australia to a place outside Australia or from a place outside Australia to a place in Australia;
- ‘ shipper body ’ means an association that, in the opinion of the Minister, represents the interests, in relation to outwards cargo shipping, of persons who are shippers of goods, or producers of goods of a kind exported from Australia;
- ‘ shipowner ’ means a person who carries on the business of outwards cargo shipping, whether alone or in partnership with any other person or persons, and includes such a person irrespective of nationality or place of incorporation, residence or business;
- ‘ the Clerk ’ means the Clerk of Shipping Agreements appointed under this Part.

Part to be exclusive.

“ 90B.—(1.) The restrictions referred to in section 35 of this Act do not include restrictions in respect of overseas cargo shipping accepted by a shipowner under a conference agreement (including a disapproved agreement).

“ (2.) The practices referred to in section 36 of this Act do not include practices in respect of overseas cargo shipping engaged in by a shipowner, or a combination of shipowners, in pursuance of a conference agreement (including a disapproved agreement).

“ (3.) Part IX. does not apply in relation to tendering or bidding in respect of the supply of services by way of overseas cargo shipping.

“ (4.) In this section, ‘ conference agreement ’ includes an agreement made before the date of commencement of this Part that would, but for sub-section (3.) of the next succeeding section, be an agreement to which this Part applies.

Agreements to which Part applies.

“ 90C.—(1.) Subject to this section, an agreement is an agreement to which this Part applies if (either as originally made or by reason of a subsequent variation) it is an agreement the parties to which are or include two or more persons carrying on two or more businesses that include outwards cargo shipping, being an agreement that makes any provision, in relation to outwards

cargo shipping, having the purpose or effect of restricting, preventing or hindering competition between any of the parties to the agreement, or by persons other than those parties with those parties or any of them, including provision for—

- (a) the fixing or regulation of freight rates;
- (b) the giving to shippers, or the withholding from shippers, of special rates or other special privileges or advantages;
- (c) the pooling or apportioning of earnings, losses or traffic;
- (d) the allocation of ports, or the restriction or other regulation of the number and character of sailings between ports; or
- (e) the restriction or other regulation of the volume or character of goods to be carried.

“(2.) An agreement is not an agreement to which this Part applies by reason only of any provision as between shipowners of the one part and shippers of the other part with respect to the terms and conditions that are to be applicable to contracts for outwards cargo shipping.

“(3.) An agreement made before the date of commencement of this Part does not become an agreement to which this Part applies before the expiration of a period of thirty days after that date, and—

- (a) if such an agreement is determined, by effluxion of time or otherwise, within that period, it does not become an agreement to which this Part applies; and
- (b) if such an agreement is varied within that period, the variation shall be taken into account in determining whether the agreement becomes an agreement to which this Part applies at the expiration of that period.

“90D.—(1.) The Minister may, by notice in writing to a shipowner served as prescribed, request the shipowner to comply with the provisions of this section, and, where such a request has been made, the provisions of sub-sections (2.) to (7.) of this section apply.

Shipowners may be required to be represented by agent and give address for service.

“(2.) If the shipowner is a corporation or is not resident in Australia, the shipowner shall, at all times after the expiration of fourteen days from the date of service of the notice, be represented for the purposes of this Part by a person (not being a corporation) resident in Australia and appointed by the shipowner as the agent of the shipowner for the purposes of this Part.

“(3.) No appointment of such an agent shall be deemed to be duly made or revoked until the shipowner has given notice in writing of the appointment or revocation to the Minister, specifying the name, and, in the case of an appointment, the place of residence, of the agent.

“(4.) Everything done by such an agent in his representative capacity shall, for the purposes of this Part, be deemed to have been done by the shipowner, but not so as to affect any liability of the agent under this Part.

“(5.) The shipowner shall, at all times after the expiration of fourteen days from the date of service of the notice, have an address in Australia for service for the purposes of this Part.

“(6.) An address does not become the address for service of a shipowner until the shipowner has given notice in writing of the address to the Minister, and an address so notified continues to be the address for service of the shipowner until another address has been so notified.

“(7.) A document or notice required or permitted to be served on, or given to, the shipowner under or for the purposes of this Part, including process of the Court, may, notwithstanding any other law, be served or given by leaving it at his address for service or by serving it by registered post on the shipowner at that address.

“(8.) Where a shipowner has given notice in writing to the Minister of the appointment of an agent of the shipowner, or of an address in Australia of the shipowner for service, for the purposes of this Part, the notice shall, for the purposes of sub-section (4.) or (7.) of this section, as the case may require, be deemed to have been given in accordance with a request made by the Minister in pursuance of sub-section (1.) of this section.

“(9.) Failure to comply with this section is not an offence, but entails the consequences specified in this Part.

“ *Division 2.—Filing of Conference Agreements.*

**Clerk of
Shipping
Agreements.**

“ 90E.—(1.) There shall be a Clerk of Shipping Agreements, who shall be appointed by the Governor-General.

“(2.) The Clerk, and any staff necessary to assist him, shall be persons employed under the *Public Service Act 1922–1964*.

**Agreements
subject to
filing.**

“ 90F. Subject to this section, an agreement that is, when made, an agreement to which this Part applies becomes subject to filing upon the making of the agreement, and an agreement that becomes an agreement to which this Part applies at any time after the making of the agreement becomes at that time subject to filing.

**Particulars to
be furnished
of certain
agreements,
variations and
determinations.**

“ 90G.—(1.) Where a conference agreement has become subject to filing, particulars of the agreement, in accordance with this section and verified as required by this section, shall be furnished to the Clerk within the period of thirty days after the date on which the agreement became subject to filing.

“(2.) In the case of a conference agreement that becomes subject to filing on a date subsequent to the date of making of the agreement, the particulars required to be furnished are particulars of the agreement as varied (whether in respect of the parties or in respect of the terms) by any variations made up to and including the date on which the agreement becomes subject to filing.

“(3.) The duty to furnish particulars under this section in respect of a conference agreement that has become subject to filing is not affected by any subsequent variation or determination of the agreement, and if, at any time after a conference agreement becomes subject to filing, the agreement is varied (whether in respect of the parties or in respect of the terms) or is determined otherwise than by effluxion of time, then, except as otherwise prescribed, particulars of the variation or determination, verified as required by this section, shall be furnished to the Clerk within the period of thirty days from the day on which the variation or determination occurs.

“(4.) The requirements of this section may be complied with—

- (a) in respect of an agreement—by any party to the agreement; or
- (b) in respect of a variation or determination of an agreement—by any person who was or is a party to the agreement immediately before, or immediately after, the variation or determination.

“(5.) Subject to the regulations, the particulars to be furnished of an agreement are—

- (a) the names of the parties to the agreement and the date of the agreement; and
- (b) the whole of the terms of the agreement, whether or not relating to overseas cargo shipping.

“(6.) The particulars to be furnished of an agreement, or of a variation or determination of an agreement, shall be furnished—

- (a) in so far as the particulars are contained in an instrument in writing by which the agreement, variation or determination was, in whole or in part, made or effected—by lodging with the Clerk a true copy of that instrument; and
- (b) in so far as the particulars are not contained in such an instrument (whether or not there is such an instrument)—by lodging with the Clerk a memorandum of those particulars,

verified as a true copy or a full and correct memorandum, as the case may require, by statutory declaration of the person by whom the particulars are furnished or of a competent person authorized by that person.

“(7.) The regulations may provide for excluding any particulars from the particulars required to be furnished under this Division.

“(8.) A person referred to in sub-section (4.) of this section may, before the expiration of the time within which, apart from this sub-section, the particulars are required to be furnished, apply in writing to the Minister for an extension of that time and, where such an application is made, the time within which the particulars are required to be furnished shall not be taken to expire—

- (a) whether or not the application is granted—before the expiration of fourteen days after the date on which the Minister informs the applicant in writing of his decision on the application; or
- (b) if the application is granted—before the expiration of the period of the extension granted by the Minister.

Failure to
furnish
particulars
an offence.

“90H.—(1.) If the requirements of the last preceding section are not complied with in respect of an agreement, every person who was a party to the agreement when it became subject to filing is guilty of an offence.

“(2.) If the requirements of the last preceding section are not complied with in respect of a variation or determination of an agreement, every person who was a party to the agreement immediately before, or immediately after, the variation or determination is guilty of an offence.

“(3.) The penalty for an offence against this section is a fine not exceeding Two thousand dollars.

“(4.) It is a defence to a prosecution for an offence against this section if the person charged satisfies the Court that—

- (a) he did not, within the time allowed for the furnishing of the particulars, advert to the question whether particulars of the agreement, variation or determination were required by this Act to be furnished to the Clerk and his failure to advert to that question was not attributable to a desire to avoid, or to indifference to, his obligations;
- (b) he reasonably relied on another party to ensure that the required particulars were duly furnished; or
- (c) he believed in good faith that particulars of the agreement, variation or determination furnished to the Clerk by him within the time allowed complied with the requirements of this Act,

and that either the particulars, or the necessary further or amended particulars, were duly furnished (except as regards time) by himself or another party before the institution of the prosecution or he did not know or suspect, before the institution of the prosecution, that there had been default in compliance with the requirements of this Act with respect to the furnishing to the Clerk of particulars of the agreement, variation or determination.

“ 90j.—(1.) Where particulars of an agreement, or of a variation or determination of an agreement, are duly furnished to the Clerk in accordance with this Division, or where those particulars are duly furnished except that the time allowed for furnishing the particulars has expired, the Clerk shall file the document containing the particulars in a repository of such documents to be kept by him.

Clerk to
file
particulars.

“ (2.) The Clerk shall keep such records and indexes of documents received by him under this Division as he thinks necessary or the Minister directs.

“ 90k. In proceedings under this Act before the Tribunal or the Court, other than proceedings for an offence against a provision of this Division, particulars of an agreement, or of a variation or determination of an agreement, as appearing from a document filed by the Clerk are evidence of the agreement, variation or determination.

Filed
documents to
be evidence.

“ 90l.—(1.) This section applies to every person who is or has been the Clerk or a member of the staff assisting the Clerk.

Secretary.

“ (2.) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connexion with this Part—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Part; or
- (b) produce to any person a document furnished in pursuance of this Division.

Penalty: One thousand dollars or imprisonment for three months.

“ (3.) A person to whom this section applies shall not be required to produce in a court any document relating to the affairs of any other person of which he has the custody, or to which he has access, by virtue of his office or employment under or for the purposes of this Part, or to divulge or communicate to any court any information concerning the affairs of any other person obtained by him by reason of any such office or employment, except when it is necessary to do so for the purposes of, or of a prosecution under or arising out of, this Part.

“ (4.) Nothing in this section applies in relation to—

- (a) the communication of information to, or the production of a document to, the Tribunal for the purposes of an inquiry under this Part, the Minister or an officer acting on behalf of, and with the authority of, the Minister; or
- (b) the communication or production to a person of, or of information or documents concerning, particulars furnished to the Clerk of an agreement to which, according to those particulars, that person is or has been a party.

“ (5.) For the purposes of paragraph (b) of the last preceding sub-section, the communication or production of any matter or document to a person authorized by writing under the common seal of a body corporate to represent the body corporate for the purposes of this section shall be deemed to be communication or production to that body corporate.

“ (6.) In this section—

- ‘ court ’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions; and
- ‘ produce ’ includes permit access to, and ‘ production ’ has a corresponding meaning.

“ *Division 3.—Powers in relation to Conference Agreements.*

“ 90M.—(1.) The Minister may serve on each of the parties to a conference agreement who carry on outwards cargo shipping to which the agreement relates a notice in accordance with this section.

Minister
may request
undertakings.

“ (2.) A notice to a party under the last preceding sub-section shall request the party to give to the Minister, by a date specified in the notice, an undertaking in writing executed by the party that, whenever the party is reasonably requested by the relevant shipper body, by notice in writing, to take part in negotiations with that shipper body with regard to arrangements for, and the terms and conditions that are to be applicable to, outwards cargo shipping to which the conference agreement relates—

- (a) the party will take part in such negotiations and will have due regard to matters and considerations raised, and representations made, by the relevant shipper body in the course of the negotiations;
- (b) the party will cause an officer designated from time to time by the Minister to be furnished with such information as the officer requires concerning the progress of the negotiations, will permit that officer

to be present at any meetings in the course of the negotiations and will give consideration to any suggestions that he may make; and

- (c) if the relevant shipper body requests the party to make available for the purposes of the negotiations any information that is reasonably necessary for those purposes and itself makes available for those purposes any such information that the parties or any of them request to be made available, the party will make available the information requested by the shipper body.

“(3.) An undertaking for the purposes of this section shall be deemed to be duly given notwithstanding that it contains qualifications or exceptions if they were permitted by the notice requesting the undertaking or have been accepted by the Minister by notice in writing to the party.

“(4.) A person on whom a notice has been served under subsection (1.) of this section may, before the date specified in the notice, apply in writing to the Minister for an extension of the time for compliance with the notice and, where such an application is made, the time within which the notice is to be complied with shall not be taken to expire—

- (a) whether or not the application is granted—before the expiration of fourteen days after the date on which the Minister informs the applicant in writing of his decision on the application; or
- (b) if the application is granted—before the expiration of the period of the extension granted by the Minister.

“(5.) In this section ‘the relevant shipper body’ means the shipper body designated by the Minister in the notice requesting the undertaking, being a shipper body that, in the opinion of the Minister, is appropriately constituted having regard to the overseas cargo shipping to which the agreement applies.

“90N.—(1.) The Governor-General may, by order, disapprove a conference agreement, whether or not particulars of the agreement have been furnished to the Clerk, on a ground specified in the order, being one of the following grounds:—

Disapproval of agreements.

- (a) that a party to the agreement has, without reasonable excuse, failed to comply with section 90D of this Act;
- (b) that there has been a failure to comply with a request for the giving of an undertaking made by the Minister under the last preceding section in relation to the agreement;

(c) that the Governor-General is satisfied, after consideration of a report to the Minister by the Tribunal, that—

- (i) there has been a failure to comply with an undertaking given under the last preceding section in relation to the agreement;
- (ii) the agreement, or the manner in which it is being interpreted or applied by the parties, or the conduct of, or the provision of facilities by, the parties in relation to outwards cargo shipping to which the agreement relates does not have due regard to the need for services by way of overseas cargo shipping to be efficient, economical and adequate; or
- (iii) the agreement, or the manner in which it is being interpreted or applied by the parties, or the conduct of the parties in relation to matters to which the agreement relates, is preventing a person from, or hindering a person in, engaging efficiently, to an extent that is reasonable, in overseas cargo shipping in relation to which he is an Australian flag shipping operator.

“(2.) For the purposes of sub-paragraph (ii) of paragraph (c) of the last preceding sub-section, consideration shall be given to the need to ensure the continuing provision of services by way of overseas cargo shipping and, in that connexion, the conditions under which, on a long term view, shipowners may reasonably be expected to provide such services.

Effect of disapproval.

“90p.—(1.) Where an agreement is disapproved under this Division, the agreement becomes, upon the date on which the order of disapproval takes effect, unenforceable as regards observance of the agreement, so far as it relates to outwards cargo shipping, on and after that date, but a transaction entered into, whether before or after the order takes effect, in pursuance of the agreement is not illegal or unenforceable by reason only of the making of the order.

“(2.) A party to a disapproved agreement shall not—

- (a) do any act or thing in pursuance of, or enforce or purport to enforce, the agreement (including the agreement as varied by any later agreement) so far as it relates to outwards cargo shipping;
- (b) enter into any other conference agreement (whether with the same parties or with other parties) that relates, in whole or in part, to the carriage of goods from Australia to a place outside Australia that is a place to the carriage of goods to which the disapproved agreement related; or

- (c) do any act or thing in pursuance of, or enforce or purport to enforce, an agreement referred to in the last preceding paragraph.

Penalty: Fifty thousand dollars.

“ 90Q.—(1.) Where, in his discretion, he considers it desirable to do so, the Governor-General may—

Reinstatement of disapproved agreement or approval of substituted agreement.

- (a) by order, revoke an order disapproving a conference agreement; or
 (b) approve the entering into by one or more of the parties to a disapproved agreement of another conference agreement (whether with or without parties who were not parties to the disapproved agreement).

“(2.) Paragraphs (b) and (c) of sub-section (2) of the last preceding section do not apply in relation to a conference agreement in respect of which an approval has been given under this section and which has not been disapproved under this Division.

“ 90R. The Court is empowered, on the application of the Minister, to grant an injunction restraining a person who has been convicted of an offence against section 90P of this Act from further contravening that section.

Injunctions.

“ 90s. An order under this Division—

- (a) shall be published in the *Gazette*; and
 (b) takes effect on the date of publication or such later date as is fixed by the order.

Publication and commencement of orders.

“ *Division 4.—Powers in relation to Individual Shipowners.*

“ 90T.—(1.) Subject to the next succeeding sub-section, the Minister may serve on a shipowner a notice requesting the shipowner to give to the Minister, by a date specified in the notice, an undertaking in writing executed by the shipowner that, whenever the shipowner is reasonably requested by the relevant shipper body, by notice in writing, to take part in negotiations with that shipper body with regard to arrangements for, and the terms and conditions that are to be applicable to, outwards cargo shipping to which the notice relates—

Minister may request undertakings.

- (a) the shipowner will take part in such negotiations and will have due regard to matters and considerations raised, and representations made, by the relevant shipper body in the course of the negotiations;
 (b) the shipowner will cause an officer designated from time to time by the Minister to be furnished with such information as the officer requires concerning the progress of the negotiations, will permit that officer to be present at any meetings in the course of the negotiations and will give consideration to any suggestions that he may make; and

(c) if the relevant shipper body requests the shipowner to make available for the purposes of the negotiations any information that is reasonably necessary for those purposes and itself makes available for those purposes any such information that the shipowner requests to be made available, the shipowner will make available the information requested by the shipper body.

“(2.) A notice under the last preceding sub-section requesting an undertaking shall be expressed to relate to outwards cargo shipping by the shipowner to a specified port or to specified ports, not being outwards cargo shipping that is within the operation of a conference agreement particulars of which have been furnished under Division 2 of this Part and which is not a disapproved agreement.

“(3.) An undertaking for the purposes of this section shall be deemed to be duly given notwithstanding that it contains qualifications or exceptions if they were permitted by the notice requesting the undertaking or have been accepted by the Minister by notice in writing to the shipowner.

“(4.) A shipowner on whom a notice has been served under sub-section (1.) of this section may, before the date specified in the notice, apply in writing to the Minister for an extension of the time for compliance with the notice and, where such an application is made, the time within which the notice is to be complied with shall not be taken to expire—

- (a) whether or not the application is granted—before the expiration of fourteen days after the date on which the Minister informs the applicant in writing of his decision on the application; or
- (b) if the application is granted—before the expiration of the period of the extension granted by the Minister.

“(5.) In this section, ‘the relevant shipper body’ means the shipper body designated by the Minister in the notice requesting the undertaking, being a shipper body that, in the opinion of the Minister, is appropriately constituted having regard to the overseas cargo shipping to which the notice relates.

**Declaration
of shipowners.**

“90U.—(1.) Subject to this section, the Governor-General may, by order, declare a shipowner to be, in relation to outwards cargo shipping to any port or ports specified in the order (in this section referred to as ‘the relevant shipping’), a shipowner to whom the next succeeding section applies.

“(2.) The Governor-General shall not make such an order except on a ground specified in the order, being one of the following grounds:—

- (a) that the shipowner has, without reasonable excuse, failed to comply with section 90D of this Act;

- (b) that the shipowner has failed to comply with a request for the giving of an undertaking made by the Minister under the last preceding section in relation to the relevant shipping;
- (c) that the Governor-General is satisfied, after consideration of a report to the Minister by the Tribunal, that—
 - (i) the shipowner has failed to comply with an undertaking given under the last preceding section in relation to the relevant shipping;
 - (ii) the conduct of, or provision of facilities by, the shipowner in relation to the relevant shipping does not have due regard to the need for services by way of overseas cargo shipping to be efficient, economical and adequate;
 - (iii) the conduct of the shipowner in relation to overseas cargo shipping between Australia and the port or ports to be specified in the order is preventing a person from, or hindering a person in, engaging efficiently, to an extent that is reasonable, in overseas cargo shipping in relation to which he is an Australian flag shipping operator; or
 - (iv) a conference agreement to which the shipowner was a party, being an agreement that related in whole or in part to the relevant shipping, has been disapproved under this Part and the disapproval has not been revoked.

“(3.) For the purposes of sub-paragraph (ii) of paragraph (c) of the last preceding sub-section, consideration shall be given to the need to ensure the continuing provision of services by way of overseas cargo shipping and, in that connexion, the conditions under which, on a long term view, shipowners may reasonably be expected to provide such services.

“(4.) Where, in his discretion, he considers it desirable to do so, the Governor-General may, by order, revoke an order under sub-section (1.) of this section.

“(5.) An order under this section—

- (a) shall be published in the *Gazette*; and
- (b) takes effect on the date of publication or such later date as is fixed by the order.

Prohibitions
applicable to
declared
shipowner.

“ 90v. A declared shipowner shall not, in respect of outwards cargo shipping to a port specified in the order by virtue of which he is a declared shipowner—

- (a) enter into a contract, or follow a practice, under which a shipper—
 - (i) is subject to restrictions with respect to, or is subject to any detriment by reason of or in the event of, his giving patronage to another shipowner; or
 - (ii) obtains or may obtain advantageous freight rates on condition that, or by reason that, he gives all or a part of his patronage to the shipowner, or to two or more particular shipowners;
- (b) pay or allow, or make an agreement to pay or allow, to a shipper a deferred rebate, that is to say a rebate of portion of any freight money upon fulfilment by the shipper of a condition with respect to confining patronage to the shipowner, or to two or more particular shipowners;
- (c) with the object of substantially damaging the business of another shipowner or preventing another shipowner from entering into competition with him, engage in freight-cutting, or use a vessel (whether alone or in conjunction with any other shipowner) to forestall the first-mentioned shipowner in the obtaining of cargoes; or
- (d) retaliate, or threaten to retaliate, against a shipper for giving patronage to another shipowner by refusing, or threatening to refuse, to carry goods of the shipper, or to carry goods of the shipper otherwise than on terms disadvantageous to the shipper, or by resorting to other discriminatory measures.

Penalty: Fifty thousand dollars.

Injunctions.

“ 90w. The Court is empowered, on the application of the Minister, to grant an injunction restraining a person who has been convicted of an offence against the last preceding section from further contravening that section.

“ *Division 5.—General.*

Minister may
refer certain
matters to
Tribunal.

“ 90x.—(1.) The Minister may refer to the Tribunal for inquiry and report any matter relevant to the exercise of the power of the Governor-General to make an order upon a ground specified in paragraph (c) of section 90N of this Act or paragraph (c) of subsection (2.) of section 90U of this Act, and the Tribunal shall hold an inquiry, and make a report, accordingly.

- “(2.) For the purposes of an inquiry under this section—
- (a) the Tribunal shall, notwithstanding anything contained in section 17 of this Act but subject to section 22 of this Act, be constituted by a Division of the Tribunal consisting of a presidential member and two members who are not presidential members;
 - (b) section 22 of this Act applies as if the holding of the inquiry, and the making of a report on the inquiry, were the hearing and determining of proceedings; and
 - (c) sections 76, 77 and 79 of this Act do not apply.

“90y. The Minister shall not refer a matter to the Tribunal under the last preceding section unless he has first carried on, or endeavoured to carry on, either personally or through officers acting on his behalf and with his authority, consultations with the parties to the conference agreement concerned who carry on overseas cargo shipping, or with the shipowner concerned, as the case requires, with a view to securing such undertaking or action by those parties or shipowner as will render the proposed reference unnecessary.

Minister to consult with shipowners before making reference.

“90z.—(1.) In an inquiry under this Division in respect of a matter arising under section 90N of this Act, any party to the conference agreement concerned is entitled to be represented.

Representation.

“(2.) In an inquiry under this Division in respect of a matter arising under section 90U of this Act, the shipowner concerned is entitled to be represented.

- “(3.) In any inquiry under this Division—
- (a) the Minister is entitled to be represented;
 - (b) if the Tribunal is satisfied that a shipper body has a sufficient interest in the inquiry, the Tribunal shall grant to the shipper body leave to be represented; and
 - (c) the Tribunal may grant to any person appearing to it to have a sufficient interest in the inquiry leave to be represented.

“(4.) The representation of a person or body in an inquiry under this Division shall be—

- (a) by a barrister or a solicitor of the Supreme Court of a State or Territory of the Commonwealth or of the High Court; or
- (b) by a person approved by the Tribunal.

“90ZA.—(1.) In connexion with an inquiry under this Division, the Tribunal may receive an undertaking to the Tribunal by a shipowner with respect to a matter appearing to the Tribunal to be relevant to the operation of this Part, and the Tribunal shall cause every such undertaking to be recorded in the records of the Tribunal.

Undertakings to the Tribunal.

“ (2.) The Minister may withdraw a reference of a matter to the Tribunal under this Division upon the giving of an undertaking under the last preceding sub-section to the satisfaction of the Minister.

“ (3.) An undertaking to the Tribunal under this section shall not, unless the contrary intention appears expressly from the terms of the undertaking, be construed as an admission as to any matter.

“ (4.) For the purposes of the application of section 68 of this Act in relation to a contempt of the Tribunal in connexion with an undertaking given in accordance with this section, the reference in that section to the Attorney-General shall be read as a reference to the Minister.

Publication of
reports of
Tribunal.

“ 90ZB.—(1.) Where the Tribunal has made a report to the Minister under this Division, the Minister shall—

(a) upon the expiration of a period of sixty days after the date on which he received the report; or

(b) if, before the expiration of that period, the Governor-General makes an order after consideration of the report, immediately after the making of the order,

direct the Registrar to make the report public.

“ (2.) After a direction has been given under the last preceding sub-section in respect of a report, a person may, on payment of the prescribed fee—

(a) inspect a copy of the report at the office of the Registrar; or

(b) obtain a copy of the report, certified to be a true copy under the hand of the Registrar or a Deputy Registrar.

“ (3.) Section 97 of this Act does not apply in relation to a report of the Tribunal under this Division.

Institution of
prosecutions.

“ 90ZC.—(1.) For the purpose of proceedings before the Court for an offence against this Part, the references in paragraph (b) of sub-section (4.) of section 101 of this Act to the Attorney-General shall be read as references to the Minister.

“ (2.) Proceedings before the Court in respect of a contempt of the Court in relation to an injunction under this Part shall not be instituted except with the consent in writing of the Minister.

Aiding and
abetting.

“ 90ZD.—(1.) A person who aids, abets, counsels or procures, or is in any way directly or indirectly knowingly concerned in, or party to—

(a) the commission of an offence against this Part; or

(b) the doing of an act or thing outside Australia that would, if done within Australia, be an offence against this Part,
shall be deemed to have committed the offence and is punishable accordingly.

“(2.) The references in the last preceding sub-section to an offence against this Part shall be read as including references to a contempt of the Court in relation to an injunction under this Part.

“90ZE. Where a person enters into, or purports to enter into, a contract of carriage or other transaction that involves an offence by him against this Part or a breach by him of an injunction of the Court under this Part, a person who was not guilty of such an offence or breach in relation to the transaction has the same rights and title, whether as a party to the transaction or as a person claiming directly or indirectly under a party to the transaction, as he would have had if the contract or transaction had not involved such an offence or breach.

Protection of certain persons.

“90ZF.—(1.) The jurisdiction of the Court in proceedings for an injunction under this Part may be exercised by a single Judge.

Constitution of Court.

“(2.) For the purposes of proceedings in respect of a contempt of the Court consisting of failure to comply with an injunction under this Part, the Court shall be constituted by not less than three Judges.

“ *Division 6.—Civil Remedies in relation to Overseas Cargo Shipping.*

“90ZG.—(1.) Subject to this section, a shipper, shipowner or other person who suffers loss or damage by an act of another person done in contravention of section 90P or section 90V of this Act may recover the amount of the loss or damage by action against that other person.

Actions for damages.

“(2.) Jurisdiction is conferred on the Court to hear and determine actions under this section, and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

“90ZH. The court in which an action under this Division is instituted may, on the application of the Minister, defer or adjourn the hearing of the action where it is satisfied that it is in the interests of justice to do so having regard to any pending or possible prosecution or proceedings for an injunction or for contempt of the Court arising out of disobedience to an injunction.

Deferment of action on application of Minister.

Findings in contempt proceedings to be evidence.

“90Z1. In proceedings against a person under this Division a finding of any fact by the Court in proceedings under, or arising out of, this Part in which—

- (a) that person has been found guilty of an offence against Division 3 or 4 of this Part;
- (b) an injunction has been granted against that person; or
- (c) that person has been found guilty of contempt of the Court,

is evidence of that fact, and such a finding may be proved by production of a document under the seal of the Court from which the finding appears.”.

Prosecutions.

9. Section 101 of the Principal Act is amended—

- (a) by omitting sub-section (3.) and inserting in its stead the following sub-sections:—

“ (3.) Subject to the next succeeding sub-section, the jurisdiction of the Court under this section may be exercised by a single Judge.

“ (3A.) The jurisdiction of the Court in respect of an offence against Division 3 or 4 of Part XA. shall be exercised by not less than three Judges.”; and

- (b) by omitting from sub-section (5.) the words “ or 86 of this Act ” and inserting in their stead the words “, 86 or 90H of this Act”.

Commissioner to furnish annual report.

10. Section 105 of the Principal Act is amended by omitting from sub-section (2.) the words “ under sub-section (2.) ” and inserting in their stead the words “ under sub-section (3.) ”.
