

NECESSARY COMMODITIES CONTROL ACT.

Act No. 47, 1919.

An Act to provide for the control of necessary commodities and the prevention of profiteering ; to repeal the Necessary Commodities Control Act, 1914 ; and for purposes consequent thereon and incidental thereto. [Assented to, 22nd December, 1919.]

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BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title
and division
into Parts.

1. This Act may be cited as the "Necessary Commodities Control Act, 1919," and is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—CONTROL OF NECESSARY COMMODITIES
AND REGULATION OF PRICES.

PART III.—GENERAL PROVISIONS.

PART I.

PRELIMINARY.

Duration.

2. This Act shall be in force until the thirty-first day of December, one thousand nine hundred and twenty.

Act to apply
to Crown.

3. This Act shall apply to the Crown and to any department of His Majesty's Government.

Repeal and
savings.

4. (1) The Necessary Commodities Control Act, 1914, is hereby repealed, except as to things done or commenced and offences committed before the passing of this Act, which shall be continued and dealt with, and in respect of which every right and liability shall remain, as if this Act had not been passed.

(2) All persons appointed under the said Act, and holding office at the time of the passing of this Act, shall be deemed to have been appointed under this Act.

(3) All rules, regulations, orders, directions, appointments, and notices made or given under the authority of the said Act, and in force at the time of the passing of this Act, shall be deemed to have been made or given under the authority of this Act.

Interpreta-
tion.

5. In this Act, except where the context or subject-matter otherwise indicates or requires,—

"Commission" means the Commissioners appointed under this Act.

"Commissioner"

- “Commissioner” means a member of the Commission. George V,
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- “Fixed price” means the maximum price of any necessary commodity as fixed and declared by the Commission.
- “Fixed rate” means the maximum rate of carriage as fixed and declared by the Commission.
- “Inspector” means an inspector appointed under this Act.
- “Minister” means the Minister of the Crown to whom the administration of this Act is for the time being committed by the Governor.
- “Necessary commodity” or “commodity” means any of the following:—
- (a) Coal, firewood, coke, kerosene, petrol, or other fuel.
 - (b) Gas or electricity for lighting, heating, cooking, or industrial purposes.
 - (c) Any article of food or drink for man or for any domesticated animal.
 - (d) Any article of clothing or apparel for man, including hats, footwear, and haberdashery.
 - (e) Fertilisers.
 - (f) Any article which enters into or is used in the composition or preparation of any of the foregoing commodities.
 - (g) Agricultural implements.
 - (h) Tools of trade.
 - (i) Seeds for sowing.
 - (j) Any article of furniture.
 - (k) Any building material.
 - (l) Carriage of necessary commodities by land or sea.
 - (m) Drugs, proprietary medicines, medical instruments, chemicals, disinfectants, soaps and toilet requisites.
 - (n) Oils.
 - (o) Any commodity which the Governor, upon the recommendation of the Commission, declares in the Gazette to be a necessary commodity.
- “Prescribed” means prescribed by this Act or by proclamation or regulation made thereunder.
- “Retail”

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“Retail” shall be deemed to refer to a sale to a person for the purpose of consumption or use.
“Wholesale” shall be deemed to refer to a sale to a person for the purpose of resale.

PART II.

CONTROL OF NECESSARY COMMODITIES AND REGULATION OF PRICES.

Appointment and constitution of Commission.

The
Commission.
Necessary
Commodities
Control Act,
1914, s. 3.

6. (1) The Governor shall appoint, by letters patent under the public seal, a Commission consisting of three persons, one of whom shall be a judge of the Industrial Arbitration Court, and shall be the chairman of the Commission.

(2) The Governor may appoint one of the other two members to be deputy-chairman of the Commission.

(3) Any vacancies in the Commission, however caused, shall be filled by appointment by the Governor.

(4) The Commission appointed under the Necessary Commodities Control Act, 1914, shall be the first Commission appointed under this Act.

Chairman
and Deputy-
Chairman.
Ibid. s. 5.

7. (1) At all meetings of the Commission the chairman shall preside, if present; and in his absence the deputy-chairman shall preside. The Commissioner presiding shall have a casting as well as a deliberative vote. The Commission may in its discretion sit in camera.

(2) Whenever the Commission is not unanimous as to any matter, such matter shall be decided by the majority of votes, and the decision so arrived at shall be the decision of the Commission.

(3) Any two members of the Commission shall form a quorum thereof.

Deputy
member.
Ibid. s. 6.

8. In case of illness or other incapacity, or absence from the State, of any member of the Commission, or of a vacancy in the office of any member, the Governor may appoint some person to be a deputy member of the Commission during such illness, incapacity, or absence, or until such a vacancy is filled. Every person so appointed shall, until his appointment is terminated by notice

notice in the Gazette, have all the powers, rights, and George V,
privileges, and perform all the duties and functions of No. 47.
a member of the Commission.

9. The Minister may appoint a secretary to the Secretary and
Commission and any other officers whom he considers other officers.
necessary to enable the Commission to carry out its *Ibid.* s. 18.
duties and functions.

Declaring and fixing the prices of necessary commodities.

10. (1) With regard to any necessary commodity the Commission
Commission, by notice in the Gazette and in prescribed to fix prices
newspapers (if any)— of necessary
commodities.

- (a) may fix and declare the maximum price at *cf. Ibid.* s. 1.
which the same shall be sold ;
- (b) may fix and declare different maximum prices
according to differences in quality or descrip-
tion, or in the quantity sold ;
- (c) may fix and declare different maximum prices
for different parts of the State ;
- (d) may from time to time make a declaration
varying or revoking any price previously fixed
by the Commission ; but only so as to apply to
future transactions ;
- (e) may, in fixing any price, do so relatively
to such standards of measurement, weight,
capacity or otherwise, as it thinks proper ;
- (f) may fix prices on a sliding scale ;
- (g) may fix prices which vary in accordance with
a standard, time, or other circumstance ;
- (h) may fix prices on a condition or conditions ;
- (i) may fix prices which vary with profits,
dividends, or wages ;
- (j) may fix prices for cash, delivery, credit, or
time payment, and in either case inclusive or
exclusive of the cost of packing ;
- (k) may fix prices on a percentage basis on landed
or other cost ; and
- (l) may fix prices according to or upon any
principle or condition prescribed.

(2) Such notice shall specify a day, being a day
not more than fourteen days after the publication
thereof in the Gazette, upon which such maximum
price shall take effect.

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Commission may
fix wholesale, as
well as retail,
prices.
cf. Imperial
Profiteering
Bill, 1919, s. 1.

11. The Commission may by notice as aforesaid fix and declare the wholesale, as well as the retail, maximum price of any necessary commodity, and for such purposes may investigate prices, costs, and profits at all stages.

Commission may
prohibit
increase in
price of
necessary
commodities.
cf. S.A. Prices
Regulation
Bill, 1919, s. 10.

12. (1) The Commission may by notice as aforesaid declare that the price of any necessary commodity shall not be increased on or after a date to be fixed by such notice.

(2) The market price of such commodity on such date shall be deemed to be the fixed price therefor, and shall be deemed to have been fixed under section eleven.

Commission
may prohibit
specific
persons from
increasing
prices.
cf. *Ibid.* s. 9.

13. (1) The Commission may, by notice delivered to any person, require that such person shall not, on or after a date to be fixed by such notice, increase the price charged by such person for any commodity specified in such notice, unless such person first obtains the permission in writing of the Commission.

(2) The price charged by such person for such commodity on the date fixed by such notice shall be deemed to be the fixed price which such person may charge for such commodity, and shall be deemed to have been fixed under section ten.

Failing to
supply
necessary
commodity at
fixed price.
cf. *Ibid.* s. 12.

14. (1) If any person, who has in his custody, or under his control, any necessary commodity in which he usually trades, fails, on—

- (a) demand of any quantity of such commodity; and
- (b) tender of payment at the fixed price for the amount demanded,

to supply such commodity in the quantity demanded, he shall, subject to the provisions of this section, be guilty of an offence against this Act and be liable to a penalty not exceeding one hundred pounds or to be imprisoned for any term not exceeding six months.

(2) If any person carries on business of any class in connection with which a necessary commodity is usually sold or supplied, or if he has been in the habit of selling or supplying such commodity, he shall for the purposes of this section be deemed usually to trade in such commodity.

(3)

(3) In any prosecution under this section it shall be a sufficient defence to show that, on the occasion in question—

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- (a) the defendant supplied a reasonable quantity of such commodity ; or
- (b) the defendant was a wholesale trader in such commodity, and the person who demanded to be supplied was not a retail trader therein ; or
- (c) the defendant had not a sufficient quantity of such commodity in his custody or under his control to supply the quantity demanded, in addition to the quantity required to satisfy all other contracts then subsisting, under which he was obliged to supply quantities of such commodity, and the ordinary requirements of his business ; or
- (d) there existed special circumstances in the particular case which rendered the declared price of a commodity inadequate, and that the action of the defendant was reasonable.

(4) For the purposes of this section the Commission shall, in determining what is a reasonable quantity, have regard to all the circumstances of the case.

(5) Where a retail trader is prosecuted under this section, the defence that he supplied a reasonable quantity of such commodity shall be sufficiently established by proof that he supplied the person making the demand with a sufficient quantity thereof to meet the reasonable needs for one week—

- (a) of himself and the members of his household ; and
- (b) if such commodity is of a kind generally used for animals, of all animals kept by him of the kinds for which such commodity is ordinarily used.

(6) For the purposes of this section, all persons who live with and in the same house as a person shall be deemed to be members of his household ; and animals shall be deemed to include birds.

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Charging
prices higher
than fixed
prices.

cf. *Ibid.* s. 13.

15. (1) Any person who sells, offers, or exposes for sale, or has in his possession or under his control for sale, any necessary commodity at a price greater than the fixed price, shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment for any term not exceeding six months.

(2) Any purchaser from such person of a necessary commodity at a price in excess of the fixed price may recover from such person in any court of competent jurisdiction the amount of such excess where the same has been actually paid by him to such person.

(3) In any prosecution for an offence under this section an invoice given or account rendered by the defendant, or by some person on his behalf, for the necessary commodity in respect of which the offence is alleged to have been committed, or an offer in writing signed by the defendant or by some person on his behalf, to sell such commodity at a specified price, shall be prima facie evidence of the sale of or the offer to sell such commodity, and of the price charged or to be charged therefor.

Penalty
for second
offence,

16. For a second offence under either of the two preceding sections the defendant shall be liable to a penalty not exceeding two hundred pounds or to imprisonment for any term not exceeding six months, or both; and, in the case of a corporation, to a penalty not exceeding five hundred pounds.

Commission
may recom-
mend
forfeiture of
necessary
commodities.
cf. *Ibid.* s. 14.

17. If the Commission is satisfied—

- (a) that a person has in his custody or under his control any necessary commodity and has failed, on demand and tender of the fixed price, to supply any particular person or persons with such commodity; or
- (b) that any necessary commodity which, in its opinion, should be distributed for public use is being withheld from sale,

the Commission may recommend to the Governor that such commodity be forfeited. The Governor may thereupon by notice in the Gazette order that the whole of such commodity, or such quantity thereof as is specified in such notice, be forfeited to the Crown.

18.

18. When any necessary commodity has been so forfeited, it shall be lawful for any inspector or any member of the police force or any person thereunto authorised in writing by the Minister—

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Power to
seize and
dispose of
necessary
commodities.
cf. *Ibid.* ss.
15, 17.

- (a) to seize any commodity which he has reasonable cause to believe is forfeited under this Act;
- (b) to store the same in any place provided by the Minister for the purpose; and
- (c) to sell or otherwise dispose of the same at such times and in such manner as the Minister may direct, or as may be prescribed.

19. When any necessary commodity is seized under this Act the person who was the owner thereof prior to the forfeiture shall be entitled to be paid therefor by the Minister at the fixed price, after deducting—

Former owner
to be paid
fixed price,
less certain
deductions.
cf. *Ibid.* s. 18.

- (a) the amount of any penalties imposed on such person in any proceedings under this Act, whether in respect of the goods so seized or otherwise, and the amount of any costs awarded against him in such proceedings, or so much of such amounts as have not already been paid; and
- (b) the costs and expenses of any application to the Commission for a forfeiture, whether in respect of the necessary commodity so seized or any other necessary commodity; and
- (c) the costs and expenses of searching for, seizing, storing, and selling or otherwise disposing of such commodity.

20. Any inspector or member of the police force or person thereunto authorised in writing by the Minister may at any time in the day or night enter into and search any premises or vessel or part thereof, where any necessary commodity forfeited or liable to seizure under this Act is, or is supposed to be, and, if necessary for that purpose, may break into and use force to enter such premises or vessel or part, and may break open and search any chests, trunks, packages, or other things in which any such commodity is or is supposed to be.

Power to
search for
necessary
commodities.
Necessary
Commodities
Control Act,
1914, s. 12.

Fixing

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Commission
may fix rates
of carriage
for
commodities.
cf. S.A.
Prices
Regulation
Bill, 1919,
s. 20.

Fixing rates of carriage.

21. The Commission may fix and declare maximum rates which shall be charged by any carrier for any service rendered in respect of the carriage of any necessary commodity, and in particular, and without limiting the generality of the power hereby conferred—

- (a) may fix and declare different maximum rates according to differences in the quality or description, or in the quantity of the commodity carried ;
- (b) may fix and declare different maximum rates for different parts of the State ;
- (c) may fix and declare different maximum rates according to the nature of the carriage ;
- (d) may, from time to time, make a declaration varying or revoking any rate previously fixed by it ;
- (e) in fixing any rate, may do so relatively to such standards of measurement, weight, capacity, distance, or otherwise as it thinks proper ;
- (f) may fix rates according to or upon any principle or condition prescribed :

Provided that nothing in this section shall affect the Railway Commissioners for New South Wales.

Penalty for
failure to
carry
commodity
on tender of
fixed rate.
cf. *Ibid.* s. 21.

22. If any carrier, who, in the usual course of his business, carries any necessary commodity, fails, without reasonable excuse, on tender of payment at a fixed rate, to carry such commodity, or charges for the carriage of such commodity at a rate higher than the fixed rate he shall be guilty of an offence against this Act and be liable to a penalty not exceeding one hundred pounds or to imprisonment for a term not exceeding six months.

Penalty for
second
offence.

23. For a second offence such carrier shall be liable to a penalty not exceeding two hundred pounds or to imprisonment for a term not exceeding six months or to both ; and, in the case of a corporation, to a penalty not exceeding five hundred pounds.

Offences

Offences in connection with inquiries by the Commission. George V,
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24. Any person who—

- (a) gives, confers, or procures, or promises, or offers to give, confer, or procure any property, or benefit of any kind to, upon, or for any person upon any agreement or understanding that any person called, or to be called, as a witness before the Commission shall give false testimony or withhold true testimony; or
- (b) by any means induces a person called or to be called, as a witness before the Commission to give false testimony or to withhold true testimony; or
- (c) asks for, receives, or obtains, or agrees to receive or obtain, any property or benefit of any kind for himself, or any other person, upon any agreement or understanding that any person shall, as a witness before the Commission, give false testimony or withhold true testimony,

shall be guilty of a misdemeanour, and shall be liable to be imprisoned, with or without hard labour, for any term not exceeding two years.

25. Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness before the Commission, with intent to affect the testimony of that person as a witness, shall be guilty of a misdemeanour, and shall be liable to be imprisoned, with or without hard labour, for any term not exceeding two years.

26. Any person who, knowing that any book, document, or writing is or may be required in evidence before the Commission, wilfully destroys it, or renders it illegible or undecipherable, or incapable of identification, with intent thereby to prevent it from being used in evidence, shall be guilty of a misdemeanour, and shall be liable to be imprisoned for any term not exceeding two years.

27. Any person who wilfully prevents any person who has been summoned to attend as a witness before the Commission from attending as a witness, or from producing

Bribing of witness.
cf. *Ibid.* s. 41

Fraud on witness.
cf. *Ibid.* s. 45.

Destroying books or documents.
cf. *Ibid.* s. 46.

Preventing witness from attending.
cf. *Ibid.* s. 47.

George V, producing any evidence pursuant to the summons to
 No. 47. attend, shall be guilty of a misdemeanour, and shall be imprisoned for any term not exceeding two years.

Injury to
 witness.
 cf. *Ibid.* s. 48.

28. Any person who uses, causes, inflicts, or procures any violence, punishment, loss, or disadvantage to any person for or on account of his having appeared as a witness before the Commission, or for or on account of any evidence given by him before the Commission, shall be guilty of a misdemeanour, and shall be liable to be imprisoned for any term not exceeding one year.

Dismissal by
 employers of
 witness.
 cf. *Ibid.* s. 49.

29. (1) Any employer who dismisses any employee from his employment, or prejudices any employee in his employment, for or on account of such employee's having appeared as a witness or given evidence before the Commission shall be guilty of a misdemeanour, and shall be liable to be imprisoned for any term not exceeding one year.

(2) In any proceeding for an offence against this section it shall lie upon the employer to prove that any employee shown to have been dismissed from or prejudiced in his employment was so dismissed or prejudiced for some reason other than a reason mentioned in subsection one of this section.

PART III.

GENERAL PROVISIONS.

Powers of
 Commission.
 Necessary
 Commodities
 Control Act,
 1944, s. 13.

30. The Commission shall for the purposes of any inquiry under this Act have all such powers, rights, and privileges as are vested in the Supreme Court, or in any judge thereof, on the occasion of any action or trial in respect of the following matters:—

- (a) The compelling the attendance of witnesses, and examining them on oath, affirmation, or declaration.
- (b) The compelling the production of books, documents, and writings.
- (c) The compelling witnesses to answer questions which the Commission deems to be relevant to the inquiry.
- (d)

- (d) The punishing persons guilty of contempt or of disobedience of any order or summons made or issued by the Commission. George V. No. 47.
- (e) The directing witnesses to be prosecuted for perjury.

31. A summons signed by the chairman of the Commission may be issued for enforcing the attendance of witnesses or compelling the production of books, documents, and writings. If any person having been served with such summons fails to appear, the said chairman may issue a warrant authorising such person to be apprehended and brought before the Commission. Summons to produce. *Ibid.* s. 14.

32. Any inspector or party aggrieved may institute proceedings before the chairman of the Commission for the recovery in a summary way under the Justices Act, 1902, of any penalty imposed by this Act or by any regulation thereunder. Recovery of penalties. *Ibid.* s. 15.

33. The publication of a notice in the Gazette shall be conclusive evidence that the fixed price of any commodity as therein appearing has been duly and lawfully fixed, that the commodity is a necessary commodity, and that all steps necessary for the fixing of such price have been duly taken in accordance with the provisions of this Act. It shall not be competent for any person or court by any means whatever to question the legality or correctness of such fixed price or whether any commodity, the fixed price of which is declared in such notice, is a necessary commodity. Gazette notice to be evidence. *Ibid.* s. 16.

34. No action shall lie against any person for any act or thing done by him under any authority conferred or purporting to be conferred upon him by the Governor in pursuance of this Act. Freedom from liability. *Ibid.* s. 17.

35. Any person who in any way resists, interferes with, hinders, or obstructs any inspector or other officer or person in the exercise or discharge of any power or duty under this Act shall be guilty of an offence and be liable to a penalty not exceeding fifty pounds. Resisting or obstructing inspectors, &c. *Ibid.* s. 18.

36. Every offence against this Act or any regulation thereunder committed by a corporation shall be deemed to have been also committed by each director and managing officer thereof, unless it is proved that such offence was committed without his knowledge or consent. Offence by corporation to be deemed an offence, prima facie, by each director and managing officer. *cf. W.A. Prices Regulation Bill, 1919, s. 15.*

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Proceedings
at law under
this Act.

37. (1) If any question of law arises in the course of any proceeding under this Act the chairman shall, if any party to such proceeding so desire, state a case for the determination of that question of law by the Supreme Court.

(2) The determination of the Supreme Court shall be binding upon the Commission.

Power to
make
regulations.

38. (1) The Governor may from time to time make regulations for carrying out the provisions of this Act.

(2) Any such regulation may impose any penalty not exceeding twenty pounds for each breach of the same, or, where the breach is a continuing one, any penalty not exceeding five pounds for every day during which such breach continues.

(3) Such regulations shall—

- (i) be published in the Gazette;
 - (ii) take effect from the date of publication, or from a later date to be specified in such regulations; and
 - (iii) be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in session, and if not, then within fourteen days after the commencement of the next session. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect.
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