

## TRADE PRACTICES AMENDMENT BILL

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### EXPLANATORY NOTE

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

*Clause 2* inserts a new provision enabling the Examiner of Trade Practices to confer with persons considered to be carrying on restrictive trade practices with a view to obtaining an agreement to abandon the practice or alter it so that it is no longer objectionable. If any such agreement is reached it may be embodied in an order of the Commission.

*Clause 3* rewrites the existing provisions relating to the report of the Examiner. The Examiner, if he is of the opinion that an order should be made by the Commission, is required to report to the Commission and serve a copy of the report on the persons concerned.

*Subclause (2)*, which is new, authorises the Commission to dispense with an inquiry if it is satisfied that, pursuant to the provisions inserted by *clause 2*, an agreement has been reached with the Examiner as to the form of the order to be made.

*Clause 4* requires the Commission to hold an inquiry in every case where the Examiner has made a report unless the Commission has exercised his jurisdiction to dispense with an inquiry under the new provisions inserted by *clause 3*.

*Clause 5* authorises the Commission to make orders in cases where it holds an inquiry or has dispensed with an inquiry.

*Clause 6* adds a provision whereby any agreement or arrangement between two or more wholesalers and a retailer under which the retailer undertakes to sell goods at stipulated prices or on stipulated terms shall be presumed contrary to the public interest unless it is established that the practice has none of the detrimental effects prescribed in section 20 of the principal Act.

*Clause 7* inserts a new Part creating offences in respect of trade practices. The offences are—

- (a) Collective tendering;
- (b) Collective bidding at auction.

Increased penalties are prescribed in cases where any such offence is repeated.

*Hon. Mr Marshall*

## TRADE PRACTICES AMENDMENT

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### ANALYSIS

Title	7. New Part IVA inserted in principal Act
1. Short Title	
2. Conciliation provisions	
3. Report after investigation	
4. Inquiry by Commission	
5. Orders by Commission	
6. Collective resale agreements presumed contrary to public interest	
	<b>PART IVA</b>
	<b>PROHIBITED PRACTICES</b>
	23A. Collective tendering
	23B. Collective bidding at auction
	23C. Penalties for collective tendering and bidding

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### A BILL INTITULED

#### An Act to amend the Trade Practices Act 1958

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

**1. Short Title**—This Act may be cited as the Trade Practices Amendment Act 1965, and shall be read together with and deemed part of the Trade Practices Act 1958\* (hereinafter referred to as the principal Act).

\*1958, No. 110

Amendments: 1961, No. 124; 1964, No. 115

**2. Conciliation provisions**—The principal Act is hereby amended by inserting, after section 16, the following section:

“16A. (1) Where after investigation pursuant to section 16 of this Act the Examiner is of the opinion that any person is carrying on a trade practice contrary to the public interest, the Examiner shall furnish to that person a statement in writing: 5

“(a) Informing him of the Examiner’s opinion as to the practice which he believes is being carried on by that person; 10

“(b) Stating on which of the grounds referred to in section 20 of this Act he bases his opinion; and

“(c) Requiring him to reply in writing within twenty-one days stating:

“(i) Whether or not he accepts the Examiner’s opinion: 15

“(ii) Whether or not he is prepared to abandon forthwith the practice in question:

“(iii) Whether or not he is prepared to alter the practice in question so that it conforms with the public interest. 20

“(2) Where any person to whom the Examiner has furnished a statement in accordance with subsection (1) of this section does not reply in accordance with that subsection, the Examiner shall forthwith report to the Commission in accordance with section 17 of this Act. 25

“(3) Where any such person replies in accordance with paragraph (c) of subsection (1) of this section, the Examiner, if he considers the person, although carrying on a practice which is contrary to the public interest, might agree either to abandon it, or to alter it so that it conforms with the public interest, shall invite that person to confer with him for the purpose of reaching agreement as to the nature of a recommendation to be made by the Examiner to the Commission as to an order under section 19 of this Act. 30 35

“(4) In any case where the Examiner invites any person to confer with him under subsection (3) of this section he shall, if necessary for the purpose of reaching agreement with that person, allow fourteen days from the date of inviting that person to confer with him, or such longer period as the Examiner in special circumstances thinks fit, before reporting to the Commission in accordance with section 17 of this Act. 40

“(5) This section shall not apply to any of the practices which are offences under Part IVA of this Act.”

**3. Report after investigation**—(1) The principal Act is hereby further amended by repealing section 17 (as substituted by section 5 of the Trade Practices Amendment Act 1961) and substituting the following section:

5 “17. (1) If as a result of any investigation under section 16 of this Act, the Examiner, after having regard to any action taken under section 16A of this Act, is of the opinion that a trade practice contrary to the public interest has been or is being carried on and that an order concerning it should be  
10 made by the Commission under section 19 of this Act, he shall furnish to the Commission a report showing:

“(a) The nature of the trade practice:

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

15 “(c) A recommendation as to the nature of the order which he considers the Commission should make under section 19 of this Act, and whether or not the recommendation is concurred with by all persons who would be bound by the order.

20 “(2) In any case where the Examiner, in reporting in accordance with subsection (1) of this section, satisfies the Commission that all persons who would be bound by any order made pursuant to the recommendation have concurred with the recommendation made under paragraph (c) of that  
25 subsection, the Commission may dispense with any inquiry under section 18 of this Act.

“(3) Where the Commission proposes to hold an inquiry into any trade practice concerning which a report has been furnished to it under subsection (1) of this section, it shall provide a copy of the report to the persons who are referred to in the report or their representatives; and those persons or their representatives shall furnish to the Commission, in a form approved by the Commission, an answer to the report within such time as may be limited in that behalf by the  
30 Commission.

“(4) A copy of the answer shall be furnished to the Examiner.

“(5) Where any trade practice consists of an agreement made by a trade association or of any action by a trade  
40 association, service of any document on the trade association shall, for the purposes of this section and of section 16A of this Act, be deemed to be service on all persons who are members of the association or represented thereon.”

(2) Section 5 of the Trade Practices Amendment Act 1961  
45 is hereby repealed.

**4. Inquiry by Commission**—(1) Section 18 of the principal Act (as amended by subsection (1) of section 6 of the Trade Practices Amendment Act 1961) is hereby further amended by repealing subsection (1), and substituting the following subsection: 5

“(1) Where a report is made to the Commission under section 17 of this Act, the Commission, unless it decides under subsection (2) of that section to dispense with an inquiry, shall conduct an inquiry into the matter.”

(2) Subsection (1) of section 6 of the Trade Practices Amendment Act 1961 is hereby repealed. 10

**5. Orders by Commission**—Section 19 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to the provisions of this Act, where the Commission after either holding an inquiry or dispensing with an inquiry under Part III of this Act is of the opinion that the continuance or repetition of any trade practice would be contrary to the public interest, the Commission may make an order directing the discontinuance or non-repetition of the practice or permitting its continuance or repetition subject to such conditions as may be prescribed in the order.” 15 20

**6. Collective resale agreements presumed contrary to public interest**—Section 20 of the principal Act is hereby amended by adding, as subsection 2, the following subsection: 25

“(2) Notwithstanding the foregoing provisions of this section, any agreement or arrangement between any two or more wholesalers and any retailer whereby the retailer undertakes to sell goods at stipulated prices or on stipulated terms shall be presumed to be contrary to the public interest unless the wholesalers who are parties thereto can establish to the satisfaction of the Commission that the agreement does not have, and is not likely to have, any of the effects referred to in any of the foregoing provisions of this section.” 30

**7. New Part IVA inserted in principal Act**—The principal Act is hereby amended by inserting, after Part IV, the following new Part: 35

“PART IV<sub>A</sub>

“PROHIBITED PRACTICES

“23A. **Collective tendering**—It shall be an offence against this Act for any two or more persons, being either wholesalers, 5 retailers, or contractors, to tender for the supply or purchase of any goods at prices, or on terms, agreed or arranged between them; and it shall be an offence against this Act for any two or more of any such persons to agree or arrange 10 or purchase of any goods, tenders for the supply or purchase of which have been invited.

“23B. **Collective bidding at auction**—It shall be an offence against this Act for any two or more persons, being either wholesalers, retailers, or contractors, to bid at any auction 15 sale of goods at prices agreed or arranged between them; and it shall be an offence against this Act for any two or more of any such persons to agree or arrange for all or any of them not to bid for any goods offered for sale at any such auction sale.

20 “23C. **Penalties for collective tendering and bidding**—  
(1) Every person who commits, or attempts to commit, or does any act with intent to commit any offence under section 23A or section 23B of this Act, shall be liable on summary conviction—

25 “(a) For a first offence, in the case of an individual, to a fine not exceeding one hundred pounds, and, in the case of a company or other corporation, to a fine not exceeding five hundred pounds;

30 “(b) For a second offence, in the case of an individual, to a fine not exceeding two hundred pounds, and, in the case of a company or other corporation, to a fine not exceeding one thousand pounds;

35 “(c) For a third or subsequent offence, in the case of an individual, to a fine not exceeding four hundred pounds, and, in the case of a company or other corporation, to a fine not exceeding two thousand pounds.”