

1958

WESTERN AUSTRALIA

**REPORT
OF
HONORARY ROYAL COMMISSION
ON
RESTRICTIVE TRADE
PRACTICES
AND
LEGISLATION**

Presented to both Houses of Parliament

PERTH :

By Authority: ALEX B. DAVIES, Government Printer.
1958

10993/12/57

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Royal Commission to Inquire into Matters Relating to the Restrictive Trade Practices and Legislation.

To His Excellency Lieutenant-General Sir Charles Henry Gairdner, K.C.M.C., K.C.V.O., C.B., C.B.E., Governor in and over the State of Western Australia and its Dependencies in the Commonwealth of Australia:

May it please Your Excellency,—

WE, the members of the Honorary Royal Commission appointed to inquire into and report upon matters relating to Restrictive Trade Practices, have the honour to present to Your Excellency our report as follows:—

1.—HISTORY.

On Wednesday, 12th day of September, 1956, the Hon. A. F. Watts moved in the Legislative Assembly—

That a Select Committee be appointed to inquire into and report upon the extent to which restrictive trade practices or agreements detrimental to the public interest operate in trade and commerce in Western Australia, and whether any, and if so, what, legislation should be passed in this State in regard thereto.

The Legislative Assembly agreed to the motion on Wednesday, 19th day of September, 1956, and appointed C. C. Perkins, C. W. M. Court, S. E. Lapham, S. Heal, M's.L.A., and the mover, as a Select Committee with power to call for persons and papers, to sit on days over which the House stands adjourned, and to report on the 14th November. This date was subsequently extended.

The Select Committee held six meetings and took evidence from 10 witnesses. At the meeting which took place on Thursday, 22nd November, in view of the impending adjournment of Parliament, it became desirable to apply for the status of an Honorary Royal Commission.

On the 1st February, 1957, the members of the Select Committee were duly appointed by Your Excellency as an Honorary Royal Commission. The terms of the appointment as published in the *Government Gazette* on the 8th day of February, 1957, were as follows:—

ROYAL COMMISSION

WESTERN AUSTRALIA, } By His Excellency Lieutenant-General Sir Charles
TO WIT, } Henry Gairdner, Knight Commander of the Most
CHARLES HENRY } Distinguished Order of Saint Michael and Saint
GAIRDNER, } George, Knight Commander of the Royal Victorian
Governor. } Order, Companion of the Most Honourable
[L.S.] } Order of the Bath, Commander of the Most
Excellent Order of the British Empire, Governor
in and over the State of Western Australia and
its Dependencies in the Commonwealth of
Australia.

To Arthur Frederick Watts, Charles Collier Perkins, Charles Walter Michael Court, Stanley Edward Lapham, and Stanley Heal, Members of the Legislative Assembly:

I, THE said Governor, acting with the advice and consent of the Executive Council, do hereby appoint you, Arthur Frederick Watts, Charles Collier Perkins, Charles Walter Michael Court,

Stanley Edward Lapham, and Stanley Heal, Members of the Legislative Assembly, to be an Honorary Royal Commission without payment of remuneration to do the following things, namely:—

- (a) To continue and complete the inquiries commenced by you as a Select Committee of the Legislative Assembly upon the extent to which restrictive trade practices or agreements detrimental to the public interest operate in trade and commerce in Western Australia.
- (b) Having completed these inquiries, to make your report to me in writing as to whether any, and, if so, what, legislation should be passed in this State in regard thereto.

And I hereby appoint you, the said Arthur Frederick Watts, to be Chairman of the said Royal Commission.

And I hereby declare that by virtue of this Commission you may, in the execution of this Commission, do all such acts, matters and things and exercise all such powers as a Royal Commission or members of a Royal Commission may lawfully do and exercise, whether under or pursuant to the Royal Commissioners Powers Act, 1902 (as amended) or otherwise.

Given under my hand and the Public Seal of the said State, at Perth, this 1st day of February, 1957.

By His Excellency's Command,
A. HAWKE,
Premier.

GOD SAVE THE QUEEN ! ! !

The Honorary Royal Commission met at 10.30 a.m. on Wednesday, 27th March, to continue the inquiries commenced as a Select Committee.

The Chairman of the W.A. Trade Bureau, Mr. F. A. Johnston, questioned the Terms of Reference, and on the subsequent advice of the Solicitor General, the Commission decided to adjourn.

On the 3rd April, 1957, the terms of appointment were amended by Your Excellency and were published in the *Government Gazette* on the 5th April, 1957, as follows:—

ROYAL COMMISSION

WESTERN AUSTRALIA, } By His Excellency Lieutenant-General Sir Charles
TO WIT, } Henry Gairdner, Knight Commander of the Most
CHARLES HENRY } Distinguished Order of Saint Michael and Saint
GAIRDNER, } George, Knight Commander of the Royal Victorian
Governor. } Order, Companion of the Most Honourable
[L.S.] } Order of the Bath, Commander of the Most
Excellent Order of the British Empire, Governor
in and over the State of Western Australia and
its Dependencies in the Commonwealth of
Australia.

To Arthur Frederick Watts, Charles Collier Perkins, Charles Walter Michael Court, Stanley Edward Lapham, and Stanley Heal, Members of the Legislative Assembly:

I, THE said Governor, acting with the advice and consent of the Executive Council, do hereby amend the Commission given to you by myself and under the Public Seal of the said State on the 1st day of February, 1957, and published in the *Government Gazette* on the 8th day of February, 1957, by inserting after paragraph (a) of the subject matter of the inquiry to be made by you, a new paragraph, to stand as paragraph (aa), as follows:—

- (aa) To inquire into any practice, agreement, arrangement or understanding which exists in or affects, or which may exist

in or affect or which at any time since the year 1952 has or may have existed in or affected trade, commerce or industry within the State and which is, has been or may be or become detrimental to the public interest or restrictive of trade, commerce or industry within the State; and to inquire into the nature, growth, extent and effect of such practices, agreements, arrangements and understandings and into any matter relating to, connected with or arising out of the foregoing matters or any of them.

And the said Commission shall be read and construed accordingly.

Given under my hand and the Public Seal of the said State, at Perth, this 3rd day of April, 1957.

By His Excellency's Command,
A. HAWKE,
Premier.

GOD SAVE THE QUEEN ! ! !

The Commission resumed its hearings on the 17th April, 1957.

2.—PROCEDURE.

Although the Commission under the terms of reference gazetted on the 8th February, 1957, had decided to commence its hearings in public it rapidly became clear, that in the interests of many of those concerned and likely to be called as witnesses and bearing in mind the procedure that had been adopted by Commissions making investigations into similar matters elsewhere, and the new terms of reference, that it would be desirable to continue the inquiries in camera. However, the Commission at the first public hearing mentioned above on the 27th March, had prepared and made a public statement. Despite the portions that appeared in the Press your Commission feels that its full contents should be included in this report. The statement which follows was read by the Chairman:—

This Commission has been appointed to continue and complete the inquiries commenced by the members of it as a Select Committee of the Legislative Assembly, upon the extent to which restrictive trade practices or agreements detrimental to the public interest operate in trade or commerce in this State, and whether any, and if so, what, legislation should be passed in regard thereto.

The members of the Commission are impressed, therefore, by the fact that the real objective of their investigations is to recommend whether there is need for legislation in this State, and if so, what form that legislation should take.

It is a well known fact that what are known as "Restrictive Trade Practices" have been the subject of different kinds of legislation in various parts of the world. Included among these, and particularly in more recent times, are Great Britain, South Africa, Canada, Sweden and several others, while there has been long standing legislation dealing with various aspects of the matter in the U.S.A. and elsewhere.

In many cases inquiries of the nature now about to be conducted by this Commission have been a pre-requisite to legislation and therefore it will be crystal clear that there is nothing unusual in an inquiry such as this.

It will be equally clear that no worthwhile investigation can be made unless the full facts are laid before the Commission, hence the necessity for the Commission to call before it all those that in the Commission's opinion may be expected

to know what practices or agreements do exist in this State, by whom and for what purpose they are administered or conducted, and whether or no they are detrimental to the public.

If they are not so detrimental, they should not be subject to the restraint or the taint of illegality, for there is no reason otherwise why persons engaged in trade or commerce should not, for example, band themselves together for concerted action.

Freedom of commercial enterprise, which connotes freedom of competition, is regarded by most of us as the natural alternative to controls of one kind or another, and if as a result of our investigations it can be shown that there is free enterprise and competition clearly existent in this State, then the Commission's task in compiling a report will indeed be an easy one.

If on the other hand, it is established that some practices are detrimental to the pursuit of free enterprise and competition, then it will be the Commission's duty to determine what legislative action should be recommended.

The Commission will therefore approach its further inquiries with an open mind. It is aware of the request made recently to the Hon. Premier by representatives of trade and commerce by way of deputation. Prior to that deputation taking place, consideration had been given and action taken in regard to difficulties that might arise as a result of the existence of an Unfair Trading Commissioner.

It will be apparent from what I have said earlier in this statement that this Commission is not prepared to act as an investigator for the above-mentioned Commissioner. Our respective spheres of activity should and will be separated.

Having reached agreement with the Unfair Trading Commissioner that the proceedings of this, Her Majesty's Commission should have precedence over inquiries being made by him, this Commission has brought to his notice the lines of inquiry likely to be pursued by us, and has taken steps to ensure that there will be no over-lapping, and no need for the "unnecessary inconvenience of two investigations" referred to during the deputation to the Premier.

That deputation also referred to "condemnation by the Royal Commission" which "would carry no right of appeal." The use of these phrases in such a context in this case seems to demonstrate a complete misunderstanding as to the duties and responsibilities of the Royal Commission. The character of no one is under inquiry. We have a fact finding Commission, and propose to report on the facts.

Nor will the Commission during the course of the inquiry make available to anyone outside the Commission and its staff the transcript of any evidence taken from time to time by the Commission, except to the witness concerned—or subject to the next following paragraph—to those against whom specific allegations are made.

In the event of any evidence containing statements against other parties which the Commission considers are serious allegations against such parties, the Commission must reserve the right, even if the evidence has been taken in confidence as hereinafter mentioned, to make the tenor thereof available to the party against whom the allegation is made, so that the party concerned may have the opportunity of tendering evidence in rebuttal.

The Commission appreciates the fact that in certain cases a witness may be anxious to give specific evidence on a confidential basis. Each such case will be dealt with sympathetically—on its own merits.

Whilst the Commission has, by law, extensive powers for enforcing attendance of witnesses, it feels sure that the exercise of such powers will rarely, if ever, be necessary.

At this stage I will quote sections 9 and 10 of the Royal Commissioners Powers Act, 1902-1956:—

Any person who uses, causes, inflicts, or procures any violence, punishment, damage, loss, or disadvantage to any person for or on account of his having appeared as a witness before any Royal Commission, or for or on account of any evidence given by him before any Royal Commission, shall be guilty of an offence.

Penalty: Five hundred pounds, or imprisonment for one year.

Any employer who dismisses any employee from his employment, or prejudices any employee in his employment, for or on account of the employee having appeared as a witness before a Royal Commission, or for or on account of the employee having given evidence before a Royal Commission, shall be guilty of an offence.

Penalty: Five hundred pounds, or imprisonment for one year.

In conclusion, I trust that this statement will have made the Commission's attitude perfectly clear, and will suffice to remove any doubts, whether such doubts were justified or not, as to the procedure the Commission proposes to adopt.

3.—EVIDENCE.

The Commission took sworn evidence from 47 witnesses covering 940 pages of transcript and necessitating the conducting of 26 sittings (including six (6) meetings of the Select Committee). Sixty exhibits were tendered in evidence and these were as follows:—

Exhibit No.

1. Copies of correspondence.
2. Copy of Association Rules.
3. Copy—Motion Picture Directory, 1956-57.
4. Extract from the *Sydney Sun*, dated 29th October, 1956.
5. Copy of statutory declaration.
6. Copy of agreement.
7. Copy of hiring agreement.
8. Booklet entitled *Facts for Businessmen*.
9. Booklet entitled *I Believe in Australia*.
10. Booklet entitled *The Fortune Directory*.
11. Copy *Australian Financial Review*, dated 28/3/57.
12. Copy *Institute of Public Affairs Review*.
13. Interim report of Committee of Inquiry, Stevedoring Industry, October, 1954.
14. Sixth Report of the Australian Stevedoring Industry Board, June, 1955.
15. Table III—Increased Employment by Industry.
16. Table—Comparison between "C" Series Index and retail prices of some food-stuffs controlled by marketing boards.
17. Table I—Share of Wages in Value of Production, W.A. Manufacturing, 1945-1955.
18. Table II—Gross Profit Margins in W.A. Manufacturing, 1945-1955.
19. Extract *Australian Financial Review*, p. 23.
20. *The West Australian Supplement*, p. 30, 27/11/1956.
21. Extract *The West Australian*, 30/10/1956, p. 4.
22. Table of net profits after taxation.
23. Extract *Commonwealth Bank Statistical Bulletin*, March, 1957, p. 77.
24. Commonwealth Form, Tariff Board: Notes for Guidance of Witnesses.
25. *Time Magazine*, 8/4/1957, p. 11.
26. February list of Member Bodies of the W.A. Trade Bureau.
27. Correspondence (between an individual firm) and an association.
28. Receipts.
29. Price list—Victoria.
30. Storekeepers' price list.
31. Retail price list—South Australia.

Exhibit No.

32. Agreed margins—N.S.W.—Sydney Suburban Shopkeepers' Association.
33. Price list—February, 1957.
34. Constitution and rules (of an association).
35. Copy of statement, 12/4/1957, re membership of trade association.
36. Annual report, State Saw Mills, 30th June, 1956.
37. File of correspondence supporting statements made in evidence.
38. Copy booklet entitled *Glass Age News*, 1957.
39. Copies of correspondence.
40. Price list.
41. Price list.
42. List of nominated storekeepers and merchant distributors.
43. Protected list, July, 1956.
44. Contract of sale.
45. Copies of company reports.
46. Stockfeed agreements and contracts of sale.
47. Replies to a questionnaire submitted by number of sectional associations.
48. Price lists—number of associations.
49. Letter from Federation of British Industries, 26/7/1957.
50. Booklet entitled *Restrictive Business Practices and the Public Interest*.
51. Magazine entitled *Director*, dated February, 1957, p. 262.
52. Table of price movements at Perth and Brisbane, quarters ended June, 1953 and September, 1956, and attached schedule.
53. Copies of minutes.
54. Copies of minutes of four associations.
55. Copies of minutes.
56. Copies of minutes.
57. Copies of minutes.
58. Copies of minutes.
59. Copies of minutes.
60. Copies of minutes.

4.—LEGISLATION ELSEWHERE ON SUBJECT OF INQUIRY.

Information as to statutes bearing on the subject of our inquiry was obtained from—

- (1) Great Britain
- (2) Union of South Africa
- (3) Sweden
- (4) Canada
- (5) United States
- (6) Queensland.

5.—COUNSEL AT PROCEEDINGS.

As no charges were involved against anyone, the Commission did not seek the assistance of counsel and consequently did not consider it necessary for witnesses to be assisted by counsel at the Commission's hearings. However, in response to enquiries on this matter the Commission on the 30th April stated—

We have unanimously decided that if any witness feels that any question asked of him is such that he requires any advice before he answers it and the Commission does not consider that request unreasonable, we will be glad to postpone the question to give him the opportunity to obtain advice.

In actual fact no such request was made although certain questions were postponed on other grounds and in some cases subsequently answered in writing. In addition, at their own request certain witnesses were permitted to have technical and secretarial advisers present with them at the hearings.

6.—RELUCTANCE TO GIVE EVIDENCE.

Difficulty was experienced in some cases with certain persons who had volunteered information to the secretary of the Commission to attend and give evidence, on the ground that they thought (whether rightly or wrongly we cannot judge) that they might suffer some detriment as a consequence of their appearance before the Commission. Some of these objections were withdrawn when the Commission decided to sit in camera. Subpoenas were issued requiring the attendance of one or two of these people.

7.—ASSOCIATIONS CONNECTED WITH TRADE AND COMMERCE IN W.A.

In the course of its enquiries the Commission ascertained that there are at least 111 associations connected with trade and commerce in Western Australia, some of which are affiliated with similar associations in other States. A percentage of them has obtained registration under the Associations Incorporation Act, 1895-1955. The majority of the remainder has written rules but some have no written rules at all.

Following on this information and the hearing of certain evidence the Commission required minute books of a number of associations to be produced and these were given close examination. In addition, the rules of 29 associations were either tendered in evidence or secured by requisition from the Commission.

The Commission did not see fit, however, to call before it representatives of all the associations comprised in the list available to it. It was apparent from other evidence given that in the majority of cases they followed a general pattern and the Commission thought it unnecessary relentlessly to call before it an executive officer or officers of all those concerned.

8.—LIST OF ASSOCIATIONS CONNECTED WITH TRADE AND COMMERCE IN THIS STATE.

The following is a list of associations in this State the existence of which became known to the Commission. Doubtless there are others of which the Commission is not aware.

1. W.A. Chamber of Manufactures (Inc.).
2. W.A. Employers' Federation.
3. Perth Chamber of Commerce.
4. Retail Traders' Association.
5. Associated Sawmillers and Timber Merchants of W.A.
6. Liquor Trades Council.
7. W.A. Road Transport Association.
8. Dental Association of W.A. (Inc.).
9. Pharmaceutical Service Guild of Aust. (W.A. Branch).
10. Retail Grocers and Storekeepers' Association of W.A.
11. Wholesale Wine and Spirit Merchants' Association of W.A.
12. Amalgamated Hardware and Kindred Associations of W.A.
13. Printing and Allied Trades Employers' Association of W.A.
14. Chamber of Automotive Industries (Inc.).
15. Fremantle Chamber of Commerce.

16. Wholesale Grocers and Druggists' Association of W.A.
17. Wholesale Automotive Supplies and Parts Association.
18. Meat and Allied Trades Federation of Aust. (W.A. Division).
19. Bread Manufacturers' Industrial Union of Employers.
20. Steel Merchants' Association.
21. Australian Rope, Twine and Cordage Association.
22. United Licensed Victuallers' Association.
23. Building Industry Congress of W.A.
24. Wholesale Electrical Traders' Association.
25. Wholesale Cycle Traders' Association.
26. Fire and Accident Underwriters' Association.
27. Electrical Retail Association.
28. W.A. Fibrous Plaster Association (Inc.).
29. W.A. Electrical Wholesalers' Association.
30. National Retail Furnishers' Association of Australia (W.A. Division).
31. Federation of Commercial Broadcasting Stations (W.A. Division).
32. Master Builders' Association.
33. Builders' Guild.
34. Royal Australian Institute of Architects.
35. W.A. Flour Millowners' Association.
36. Fruit and Produce Agents' Association.
37. Real Estate Institute of W.A.
38. Associated Banks of W.A.
39. Wholesale Paper Merchants' Association of W.A.
40. W.A. Tractor Distributors and Machinery Merchants' Association.
41. Oversea Shipping Representatives' Association.
42. W.A. Paper Bag Manufacturers' Association.
43. The W.A. Wrapping Paper Merchants' Association.
44. Wholesale and Manufacturing Stationers' Association of W.A.
45. The W.A. Provincial Press Association.
46. Caterers and Restaurant Keepers' Association.
47. W.A. Optometrical Association.
48. Ball and Roller Bearing Traders' Association.
49. Wholesale Dried Fruit Distributors' Association.
50. Wholesale Softgoods and Clothing Manufacturers' Association of W.A.
51. Master Dry Cleaners and Dyers' Association.
52. Metal Industries Association of W.A.
53. The Glass Merchants' Association of W.A.
54. W.A. Paint Manufacturers' Association.
55. Tyre Retreaders and Merchants' Association.
56. Master Plumbers' Association of W.A.
57. Aerated Water Manufacturers' Association.
58. Electrical Contractors' Association of W.A.
59. The Furniture Trades' Association of W.A.
60. Venetian Blind Manufacturers' Association.
61. The W.A. Master Tanners' Association.
62. The W.A. Canvas Goods Manufacturers' Association.
63. The W.A. Master Photo Engravers' Association.
64. The Food Technology Association of W.A.
65. Brick Manufacturers' Association.
66. Radio Traders' Association.
67. W.A. Wool and Produce Brokers' Association.
68. Cement Manufacturers' Association.
69. Superphosphate Manufacturers' Association.
70. W.A. Pastrycooks and Cake Manufacturers' Association.
71. The Australian Shovelmakers' Association.
72. The Wholesale Hardware Merchants' Association of W.A.
73. W.A. Fencing Materials Association.
74. Cast Iron Porcelain Enamelware Association.
75. W.A. Steel Pipes and Steel Fittings Wholesale Distributors' Association.
76. Steel Distributors' Association.
77. The Wholesale Engineering Valve Distributions Association.
78. Linseed Oil Association.
79. Bright Steel Shafting Association.

80. Steel Split Pulley Association.
81. Stainless Steel Sinks Manufacturers' Association.
82. Bath Manufacturers' Association.
83. Wholesale Malleable Pipe Fittings Association.
84. W.A. Cartridge Association.
85. Glazed Wall and Floor Tile Association.
86. W.A. Cutting Tool Association.
87. Sanitary Ware and Sewerage Supplies Association.
88. Lead Agreement Association.
89. Proprietary Articles Trade Association of W.A. (Inc.).
90. Retail Hardware Association of W.A.
91. W.A. Flour Millers' Association.
92. Federated Retail Jewellers' Association of the Commonwealth (W.A. Branch).
93. Marine Underwriters' Association of W.A.
94. W.A. Cement Distributors' Association (Inc.).
95. Film Renters' Association of Australia Ltd.
96. Motion Picture Exhibitors' Association of W.A.
97. Wholesale Paint Distributors' Association.
98. Electrical Retailers' Association of W.A.
99. Radio and Electrical Appliance Trades Association.
100. W.A. Wholesale Electrical Trades' Association.
101. The Boot and Shoe Manufacturers' Association.
102. The W.A. Master Tanners' Association.
103. The W.A. Wooden Box and Case Manufacturers' Association.
104. Wood Handle Manufacturers' Association.
105. Gutter Manufacturers' Association.
106. Sheet Metal Manufacturers' Association.

The following are Federal bodies mentioned to us with which there is either an arrangement or understanding or which consist of representatives of State associations:—

1. Automotive Products Manufacturers of Australia.
2. Federated Hardware Association of W.A.
3. Hardware and Tool Manufacturers' Association.
4. Hardware Retailers' Federation of Australia.
5. Federated Retail Jewellers' Association of the Commonwealth.

9.—SUMMARY OF OTHER STATUTES.

Before proceeding it will, we think, be of interest to give some resumé of each of the statutes mentioned earlier and which we were able to peruse. This resume follows:—

(1) *Great Britain.*

The Restrictive Trade Practices Act, 1956, was passed in August, 1956. Briefly, the Act contains three major parts, the first provides for the registration and judicial investigation of a wide range of industrial and commercial agreements. It creates the office of a registrar of Restrictive Trading Agreements, establishes a Restrictive Practices Court, consisting of judges and members appointed on the grounds of their knowledge of industry and public affairs.

Part II deals with re-sale price maintenance and on the one hand prohibits the collective enforcement of re-sale prices while on the other hand it empowers an individual supplier to maintain the re-sale price of his products.

Part III amends the constitution and function of the Monopolies Commission and provides for it to deal with agreements other

than those embraced by the Registrar and Restrictive Practices Court. It deals with a position in which a firm or group of firms controls one-third or more of a market and also with restrictive agreements relating to exports, which are registrable with the Board of Trade.

Part I aims at checking and, if necessary, prohibiting, all forms of price rings and other restrictive practices. Its operation is not confined to an agreement ordinarily recognised as a binding arrangement enforceable at law, but extends also to informal arrangements or understandings. Furthermore, a person may be treated for the purposes of Part I as being a party to such an agreement even though he is only indirectly concerned either because he is a member of a trade association which is a party to the agreement or because he is represented on such an association by a member. With some exceptions, Part I embraces every agreement for the supply or processing of goods under which two or more parties accept restrictions in respect of specified matters, namely: (a) prices; (b) terms of trading; (c) quantities or kinds of goods; (d) processes to be applied; (e) persons to whom goods are supplied or from whom they are bought, or areas or places where goods are to be supplied or acquired.

(2) *Union of South Africa.*

An Act of the Union of South Africa of 1955 is entitled an Act to provide for the prevention or control of monopolistic conditions, to repeal the Undue Restraint of Trade Act, 1949, and to provide for other incidental matters. This Act enables the Board of Trade and Industries to make investigations—

- (1) to ascertain whether any monopolistic conditions exist, or
- (2) into any particular type of business agreement, arrangement or understanding, business practice or method of trading, which in the opinion of the Minister is only adopted for the purpose of or in connection with the creation or maintenance of monopolistic conditions.

Monopolistic conditions are defined by section 2 as

- (a) every agreement, arrangement or understanding, whether legally enforceable or not, between two or more persons;
- (b) every business practice or method of trading, including any method of fixing prices;
- (c) every act or omission on the part of any person, whether acting independently or in concert with any other person; and
- (d) every situation arising out of the activities of any person or class or group of persons,

which, by directly or indirectly restricting competition, has or is calculated to have the effect of—

- (i) restricting the output or disposal of any commodity; or
- (ii) limiting the facilities available for the production or distribution of any commodity; or
- (iii) enhancing or maintaining prices; or
- (iv) preventing the production or distribution of any commodity by the most efficient and economical means; or
- (v) preventing or retarding the development or introduction of technical improvements for the expansion of existing markets; or
- (vi) preventing or restricting the entry of new producers or distributors into any branch of trade or industry; or
- (vii) preventing or retarding the adjustment of any branch of trade or industry to changing circumstances.

Provision exists to ensure that it shall not apply to limit any patent or copyright or to prevent organisations of employees from entering into agreements with employers or to prevent any co-operative society or any other body of producers of agricultural products from regulating the production or distribution of any agricultural commodity which has not undergone a process of manufacture, or preventing any regulatory board established under Act of Parliament from regulating the production or distribution of any agricultural commodity.

The board is empowered after investigation, if it is not satisfied that there are circumstances which justify the existence of the "monopolistic condition" in the public interest, to recommend to the Minister to take action to require the persons concerned to terminate or cease the agreement, arrangement or understanding, or to refrain from applying the business practice or method of trading complained of or to declare the "monopolistic condition" to be unlawful and to dissolve the body as the Minister may consider necessary. However, the board, before submitting to the Minister such a report, is required to give the person concerned an opportunity of lodging with the board such written or oral representations as the person may consider necessary in regard to the subject of the investigation. There are under Section 7 provisions for a right of appeal to a court to be constituted by the Governor General of which a Judge of the Supreme Court shall be President. There are, of course, a number of machinery and ancillary provisions which it is impossible fully to refer to in this report.

(3) Sweden.

This country has passed two statutes, one concerning Supervision of Restrictive Practices in Industry and Trade which was passed

in 1946 and the other dealing with Measures against Restrictive Practices in Trade which became law in 1953.

The first Act set up what is called a Monopoly Investigation Bureau with power to register agreements, make investigations and reports relating to any restrictive agreements.

The 1953 Act prohibits resale price maintenance and collusive tendering and also provides for any restrictive practices to be reviewed in the public interest. It appoints a Commissioner of Business Freedom with the following main functions:—

- (a) He may hold discussions in private with persons adopting a restrictive practice;
- (b) he may call for an investigation of the facts by the Monopoly Investigation Bureau;
- (c) he may arrange for a public hearing before the Business Freedom Council.

Under the above Acts neither the Business Freedom Council nor the Minister of Commerce has any special power to make orders and all they are enabled to do is to negotiate with the industries concerned.

Referring to the Swedish legislation, the following resume was given in evidence by a witness who appeared on behalf of the W.A. Trade Bureau:—

(Transcript Page 922.)

I have not been able to get any worthwhile information from any Scandinavian country other than Sweden and from what I can gather the position in Sweden is by no means comparable to that in England.

It appears that as far back as 1925 a law was passed giving the Government power to investigate monopolies but this, like our Commonwealth Legislation, became practically a dead letter. I do not know the reason why it was not effective and perhaps it would be better if I do not guess.

In 1946 a new Act was passed which set up a statutory board which was given power to enforce the public registration of various types of trade agreement. It was also empowered to conduct investigations into any practices considered restrictive.

Apparently there is no body comparable to the English Restrictive Practices Court which would have power to veto any of the registered agreements, the view being held that the publicity attached to registration would be sufficient to prevent the application of any agreement clearly against the public interest. The latest figures available to me suggest that something over 1,200 agreements had been registered.

The statutory board to which I have referred has power to make recommendations, but any action taken in respect of a practice considered restrictive would be taken by the Government through the equivalent of our executive council. Examples given of possible action include the formation of a competing Government enterprise or State control of the particular industry, but I cannot find that either course has ever been adopted.

In 1953 and following upon consultations between the Government and representatives of trade and industry a new Act was passed completely prohibiting collective resale price maintenance in much the same way as has been done in England by the 1956 Act. The Swedish legislation also deals with certain arrangements for joint price quotation of the type investigated by the British Monopolies Commission in respect of Greater London Buildings, and also establishes a body to investigate and seek through negotiation the removal of restrictive practices which are considered to be of harmful effect.

(4) Canada.

Legislation dealing with restrictive trade practices was first passed in this country in 1889. There is, at present, a statute in force known as the Combines Investigation Act and in addition four sections of the Canadian Criminal Code deal with the same subject.

The Act appoints a Director of Investigation and Research and a Restrictive Trade Practices Commission. The Director's duties are to carry out investigations under the following:—

- (i) Investigations of alleged conspiracies of the nature of combines as defined in the Act;
- (ii) general inquiries into conditions or practices related to monopolistic situations or restraints of trade.

Following his inquiries, the Director furnishes the Commission with his evidence, and it holds a hearing and subsequently reports to the Minister of Justice. All the Commission's reports are published and cover a wide range of industries but dealing mostly with re-sale price maintenance.

(5) United States.

The following reference to legislation of this country was made in sworn evidence given before the Commission by a witness who appeared on behalf of the W.A. Trade Bureau.

(Transcript Page 923.)

Although I was not asked to do so I have also attempted to find out something of the operation of similar legislation in the United States of America where it originated. Unfortunately, the subject is so complex and so coloured with political considerations that it is almost impossible to draw any general conclusions of use to this Commission. The original Sherman Act was expressed in the widest possible terms as condemning all contracts in restraint of trade or commerce. The meaning to be attached to that legislation has varied from time to time since 1890 in accordance principally with the political and economic climate and the activity of the Attorney General charged with the administration of the Act. All that can be definitely said is that in relation to re-sale price maintenance the position is essentially the same as in England. There appear to be a few other types of restraint of trade which are absolutely prohibited but these are not of particular importance. In general, contracts come within the legislation only if the restraint which they impose is considered unreasonable. What is considered reasonable or unreasonable varies in the main with the constitution of the Supreme Court.

(6) Queensland.

In 1948 the Parliament of Queensland passed an Act to make Better Provision for the Regulation of Prices and Rates of Certain Goods and Services by Consolidating and Amending the Law Relating to the Prevention of Profiteering; to Regulate Sales of Certain Lands; and for purposes connected therewith.

Part IV deals with Combines and Monopolies. Under this Part it is an offence for anyone to give certain concessions subject to the following conditions:—

- (a) That the person deals or intends to deal exclusively with any person or class of person or with a commercial trust if such dealing is calculated to be contrary to the public interest; or
- (b) that the person does or will not deal with any person or class of persons either in relation to any particular goods or generally, if such refraining from dealing is or is calculated to be contrary to the public interest; or
- (c) that the person restricts his dealing with any person or class of persons either in relation to any particular goods or generally, if such restrictions in dealing is or is calculated to be contrary to the public interest; or
- (d) that the person becomes a member of a commercial trust; or
- (e) that the person undertakes to act in conformity with the directions of a commercial trust with respect to the sale, purchase or supply of any particular goods or generally.

The Act prohibits a person, either as a principal or agent from refusing to sell or supply goods either absolutely or except under disadvantageous conditions.

Any attempt to monopolise the demand for or supply or price of any goods is an offence if such monopoly or control is deemed to be contrary to the public interest.

In respect of prices the following are offences under this Act:—

- (a) If any person whether principal or agent sells goods the price of which has been determined, controlled or influenced by any commercial trust of which that person or his principal is or has been a member; or
- (b) if any person whether a member or not sells goods at a price in conformity with the directions of a commercial trust or of an association.

In the event of a member of a commercial trust committing the above offence, then the Act provides that every member of such trust shall be deemed to have committed the offence.

Very severe penalties are provided—

- (a) if the offence is prosecuted summarily—a penalty not exceeding one thousand pounds or imprisonment for a term not exceeding 12 months, or both such penalty and imprisonment, or, if the offender is a body corporate, a penalty not exceeding five thousand pounds; or
- (b) if the offence is prosecuted on indictment—a penalty not exceeding two thousand pounds or imprisonment for a term not exceeding two years, or both such penalty and imprisonment, or, if the offender is a body corporate, a penalty not exceeding ten thousand pounds.

In addition to the aforementioned references, it is known that the following countries also have legislation dealing with restrictive trade practices and/or monopolies:

Denmark.

Republic of Eire.

The Netherlands.

New Zealand.

Norway.

West Germany. (Legislation has been recently passed in this country, but despite every effort to obtain a copy of the Act, we have not received such a copy up to the time of making this report. We were particularly anxious to obtain this legislation, in view of the tremendous expansion of industry in West Germany since the war. A Bill was introduced first in 1951 and the Act was passed on 19th July, 1957.)

10.—STATUTORY MARKETING BOARDS.

The Commission had before it considerable evidence, much of it derived from an examination of minute books, of the activity of various associations in the control of prices, the channelling of distribution and a corresponding reduction of competition, and also evidence of what is known as "level or collusive tendering." Although satisfied that in some instances this activity was not of such a nature as to be clearly detrimental to the public interest, in some instances the opposite could have been the case. Witnesses, in supporting this type of activity, referred to it as "orderly marketing." Comparisons were drawn between the methods adopted and those used by various marketing boards, *e.g.*, those engaged in the marketing of primary products. Such resemblances clearly exist, but the methods by which it is achieved differ very greatly. Boards such as the Barley Marketing Board, the Potato Marketing Board and others have various things common with the actions of some of

the associations but differ in very important and essential particulars, the chief of these being:—

- (i) They exist by virtue of public Statutes passed by Parliament and are thus exposed to the full light of publicity at the time of their creation and regularly thereafter as their annual reports are tabled in both Houses.
- (ii) Those Statutes are capable of amendment and have been amended by the same processes and with the same publicity.
- (iii) The affairs of all these boards are managed by persons representative of both sides. For instance, the Barley Board has representatives of the barley growers who have barley for sale. But it also has representatives of the brewers and malsters who are purchasers of barley and an independent chairman appointed by the Government. A similar set-up prevails in other such boards.

No such set-up occurs in the associations. They are managed by persons representative of one side only and are responsible to no other authority than members of the association only interested as themselves. Their affairs have not been made public.

We feel, therefore, that any risk of detriment to the public that may be implicit in the activities of these associations can best be safeguarded by a system of registration which we outline in our recommendations.

11.—GENERAL OBSERVATIONS.

The terms of reference of this inquiry could be divided into two parts—

- (a) to inquire into and report upon the extent to which restrictive trade practices or agreements detrimental to the public interest operate in trade and commerce in Western Australia, and
- (b) whether legislation should be passed in this State in regard thereto, and if so, what legislation.

In its opening statement your Commission indicated that it felt its duty was "fact finding" only and not expressly or by implication to "charge" individuals, corporations or associations concerned, and, in recognition of the anxiety of some witnesses not to have their names disclosed to the public or to business competitors, it decided to treat the evidence as confidential. For the same reason, in incorporating extracts from evidence we have removed therefrom in almost all cases anything which would identify the parties concerned.

Evidence clearly showed that there exists in Western Australia, an increasing tendency to form trade associations for the purpose of—

- (a) Mutual self help to members.
- (b) Channelling of distribution through its members.
- (c) Collective agreement as to price fixation and the enforcement thereof.
- (d) Level or collusive tendering.

12.—CHANNELLING OF DISTRIBUTION.

Channelling of distribution as undertaken through trade associations could, perhaps, come under two headings—

- (i) ensuring or endeavouring to ensure that only persons within the association are eligible to distribute certain commodities combined with severe restrictions of membership of the association, and
- (ii) refusal to supply unless there is a certainty of price maintenance which is enforced by "stop orders," penalties or investigations.

Some of the associations are regulated by a constitution, some by a code of laws, others by regulations and rules, and some by a combination of all three.

Whilst the original formation of these associations was, generally speaking, designed to secure orderly marketing, uniform selling prices and conditions, and to prevent price-cutting, repeated instances were found during the inquiry of departure from these principles.

Evidence disclosed that members of an association agreed to impose economic sanctions against one firm in an endeavour to force that firm to become a member of an association because its prices were far below those of its competitors. The association's members further agreed, "That should the firm join the association, the first action necessary would be to achieve uniformity in prices."

On the other hand considerable evidence was tendered by those desiring to join an association and comply with its edicts but who were refused or the request not granted.

The desire to join an association was quite understandable when it is considered that some of the associations have been in operation for many years and have built up an organisation which has contact with kindred business associations not only in Australia but throughout the world.

Evidence was given as to an agreement between an association of manufacturers and an association of wholesalers. There is no doubt that such agreement is enforced as rigidly as possible. Transcript page 800 discloses that an agreement was reached whereby the association undertook to take the entire output of various factories and to

promote active distribution throughout Australia. The basis of the agreement was that a group of manufacturers formed into an association, appointed members of another association as their sole distributors throughout the Commonwealth and undertook that, apart from supplying equipment to the various importers and manufacturers, they would supply only to members of the . . . Association. This arrangement—now of some 20 years' standing—has substantially promoted the growth of the Australian industry, resulting in a chain of efficient and responsible distributors throughout the Commonwealth. The Code of Understanding was submitted. What cost and energy has been expended in reaching this ultimate was difficult to ascertain, but in many trade associations members were understandably reluctant to admit other new competitors into this source of supply, built up over many years, as by such action it would react to the members' detriment, while on the other hand, those desiring to join were extremely jealous of the rights of those members, and in evidence strongly voiced their disapproval of the principle of a restricted association membership.

By virtue of their ability to deal in large quantities, associations provide a strong temptation to manufacturers to embrace an easy method of disposing of goods by confining the sales to particular associations. By so doing they avoid the complexities of advertising, distribution, related services and administration connected with the ordinary trade and retail marketing. In times of shortage, members of associations enjoy an advantage in securing goods much to the discomfiture of non-association members.

Evidence also disclosed where manufacturers had supplied non-association members but when representations were made to them by the association concerned, the manufacturer then ceased to supply the non-association members. This is borne out by reference to minute books, extracts from one of which are as follows:—

The president reported on the conference held with the agents of overseas manufacturers and the decisions made thereat. He stated that the agents had indicated their preparedness to co-operate so long as we, as an association, "take up" all their available quotas.

Supplies: The president briefly reported that at the Federal meeting representatives of Australian and overseas manufacturers gave assurances that no new accounts would be opened by them in any State unless prior discussion be entered into with the State association concerned.

A letter set out hereunder submitted as portion of Exhibit No. 37, supports the contention of association control over manufacturers:—

(Letter from Birmingham.)

From what we can gather the . . . are required for concerns who are engaged in the . . . trade. We do not know whether you are aware of the fact, but there is in existence in Australia a . . . association covering the entire Commonwealth and there are individual associations in each particular State. We have by us a list of members but the two names mentioned above do not appear as

association members. In actual fact we act in strict adherence to the associations and confine our confirming to relative members thereof only. When you contacted us originally we were under the impression that your manufactures (German manufacturer being written to) were intended more or less for the . . . trades.

In regard to this aspect of the inquiry, the following extract taken from evidence given on behalf of the Perth Chamber of Commerce is important—

(Transcript Page 348.)

Commissioner to Witness: "Legislation and commissions' reports elsewhere have referred particularly to two practices that are in operation in certain places. One of them is the agreements between bodies of businessmen of one kind and another for maintaining minimum prices in their industry. The other is the provision for preventing or restricting the entry of new persons into the business by the means sometimes it appears, of refusing them supplies except on onerous conditions."

Question: "Would you think there could be free competition in any industry where conditions of that sort were known to exist?"

Witness: "I should say the test is: Do these conditions operate against the interests of the public. If they do not there can be no criticism of them."

The contention of that witness certainly has merit and when applied to the question of restrictive trade practices indulged in by trade associations a conclusion is reached that without exhaustive inquiry in each particular association practice, no decision can be arrived at as to whether the action is detrimental to the interests of the public or otherwise.

13.—PRICE FIXATION AND CONTROL.

Considerable evidence was heard on the question of price fixation and control by associations.

Whilst agreement on price fixation was unanimous it was only so, provided the associations had the power to be the price fixing authority as the extracts from evidence set out below, indicate—

(Transcript, page 306.)

Question: Can you indicate why you are not in favour of Government control and yet are in favour of private control in regard to price fixation?

Witness: Yes, because firstly, we stand primarily for free enterprise and the voluntary conducting of our affairs without being bound by a statute.

(Transcript, page 708.)

To a further witness.—Question: Why do you fix the retail price of an article?

Witness: There is a very good reason for it. In fixing the retail price we control the price that the public pays for the article. We control the profit margin which the various sections of the trade make as between the manufacturer and the ultimate consumer. In times when articles may be in short supply there would be an opportunity for other sections of the trade to place an excessive profit on the article, to the detriment of the consumer. As manufacturers, we are vitally interested in the price that the consumer ultimately pays for the article because that can regulate demand. As manufacturers we want the greatest possible demand for our article.

Question: Do you believe in price control?

Witness: No, I do not believe in State price control.

Question: You believe in fixing a price though?

Witness: Yes, by our own members.

Evidence tendered and extracts from minute books show clearly that many associations have made strenuous efforts to enforce prices agreed upon by members. It was revealed that in some trades suspected offending members were subject to examination of their books by tribunals and in quite a number of instances the offender had to either submit to a fine or make a donation to the association funds ranging from £25 to £100 or pay into the association funds the profits of the transaction. Minutes indicated that where the amounts were not paid, firms and members were asked to resign. These aspects are set out in minute books and other evidence.

Transcript pages 352-3 disclose that, in the opinion of a witness and substantiated by others throughout the inquiry, where the association has made by-laws or regulations prescribing minimum prices to be charged by members for various grades, types and sizes of their products and prescribing the discounts which may be allowed or prohibited or regulated, no objection should be raised to these by-laws or regulations being registered at the Supreme Court so that the public, on inquiry, could be acquainted with them.

We feel that some forms of price determination and collective agreement may be beneficial to the community, particularly in such a State as this. We refer, for example to arrangements made by association and manufacturer which has resulted in a creation of an Australian industry, to agreements made by manufacturers which result in supplies of their products being made available all over the State at the same price. When this is the result of the combined activity it can be regarded as a distinct benefit to a large portion of our community, and should be encouraged provided other aspects do not act to the detriment of the public and seriously mitigate against the benefits being bestowed.

The application of the principle of whether the practice of price fixation by other than statutory authority is desirable and not detrimental to public interest can once again only be ascertained by exhaustive inquiry into every aspect of each particular case and if the suggestion arising from the statement of a witness "that no objection should be raised to the by-laws or regulations of associations being registered at the Supreme Court so that the public, on inquiry, could be acquainted with them," be followed, then that should prevent an action "detrimental to the public interest."

14.—LEVEL OR COLLUSIVE TENDERING.

We came across several instances of what is usually known, we understand, as level or collusive tendering. This amounts to an

arrangement between persons engaged in the same lines of business not to tender an amount which differs from that to be tendered by other persons engaged in the same line of business. This practice, of course, eliminates the competition as to price on which the practice of calling for tenders is based and may have the effect of destroying the real reason underlying the calling of tenders, namely, to obtain competitive prices, and is correspondingly undesirable. It appears that this practice is not as yet very common in Western Australia but there is direct evidence of it in certain associations and it is therefore desirable that no opportunity should be given for it to become more widespread.

The following list provided by Mr. G. W. Fruin, Comptroller of Stores, West Australian Government Railways, indicates a number of articles which are non competitive as to price whenever tenders are called:—

(Transcript page 444.)

Antimony
Augers
Bakelite material (electrical switches, fittings, etc.)
Bearings—ball and roller
Brushes—paint and varnish
Belting, vee
Brass, bar and sheet
Cement
Cells, dry
Conduit and conduit fittings
Cables, electrical
Drawing linen and paper
Drills, twist
Electrodes
Files
Forks, ballast
Fly wire
Greases—various
Insertion rubber
Kerosene
Lead, sheet
Lamps, electric
Locks, pad, various (Lockwood)
Masonite
Motor spirit
Nails
Oils, motor, various (standard grades)
Oils, linseed
Oil, diesel fuel
Paper, brown
Paper, toilet
Petroleum jelly
Spark plugs
String
Shovels
Coal Scoops
Sleepers
Taps and Dies
Tubes and Fittings
Tyres and Tubes
Tin, ingot
Tubes, fluorescent
Radio valves
Steam wheel valves, etc. (Johns)
Wire, V.I.R.
Wheels, abrasive

When we call quotes for any of these the prices offered are identical.

Perusal of minute books indicated considerable discussion on various contracts and in many cases the minutes listed the agreed discounts on the different lines for which tenders had been invited.

Whenever it was possible to do so, disciplinary action was taken by some associations against any member who committed a breach

of prices in respect of tendering. The Commission became aware of a number of instances where a member who tendered a price below that agreed to by the association was required to pay the profit of the transactions into the association's funds.

15.—MOTION PICTURE INDUSTRY.

Evidence was given by a group of exhibitors for the licensing of motion picture theatres and the divorcement of the producer and distributor companies from the exhibition field but other evidence indicated a sharp divergence of opinion on these subjects.

It is apparent to the Commission that if these matters are to be more closely examined then inquiries would have to be made on a much wider scope on a Commonwealth-wide basis.

Evidence made it quite obvious to the Commission that in view of the circumstances outlined above it would be unwise to make any recommendation on the matters raised. In consequence the Commission did not pursue its inquiries to the extent that it otherwise would have done.

16.—METROPOLITAN MARKETS.

During the course of its inquiry certain evidence was given by the secretary of an organisation against the operations of two companies at the metropolitan markets. As a result of the allegations made it became necessary to call upon other witnesses to testify.

The complaints concerned the activities of a co-operative agency company and a company connected with the supply of vegetable crates.

However, after investigation your Commission satisfied itself that the complaints were not substantiated.

17.—EMPLOYER-EMPLOYEE RELATIONSHIPS.

We consider that the existence of bodies such as the Employers' Federation while it handles only industrial matters and not such things as prices, trade discounts and the like, is well warranted.

We feel that a body such as this is a necessary and desirable organisation to enable employers not only to discuss their problems but to co-ordinate their efforts in regard to industrial and related matters.

18.—COMMENT ON VARIOUS SECTIONS OF TRADE.

We wish to make it clear that we have no objection to offer, in fact rather the contrary, to the existence of manufacturers, wholesalers and retailers in their respective

spheres of trade and we have earlier cited reasons for this. It is only when these various sections act in combination to restrain competition, or to regulate prices in any way which may be against the public interest, that we desire to comment.

In order to illustrate the service provided by the wholesalers we refer to evidence adduced in respect of wholesalers in one particular trade which showed that stock on hand at the last balance date was valued at £3,798,916 while the amount of credit outstanding at 30th April, 1957, to both resellers and trade totalled £1,891,139.

We can in addition offer our commendation to various associations in the work they have done and can do in various directions such as research, conduct of employer-employee negotiations, distribution of technical knowledge and the like. We therefore have no desire to place the slightest restriction on these aspects of trade associations.

19.—UNANIMOUS RECOMMENDATIONS.

We therefore unanimously recommend—

(1) That "Trade Association" should be defined as follows:—

"Trade Association"—a body combination or association of two or more persons (other than merely as employees) formed for a purpose which includes or the activities of which or any combination of some of the members of which include the purpose of furthering the trade interests of all or any of its members or of persons or corporations represented by its members. Provided that the Registrar may exempt from registration any such combination whose objects are only those of research into and exchange of technical knowledge processes and the like or in relation to matters connected with employer-employee relations.

(2) That there should be appointed a Registrar of Trade Associations.

(3) That any such association now registered under the Associations Incorporation Act, 1895-1955, should as from the date of its registration with the Registrar of Trade Associations cease to be registered under the lastmentioned Act.

(4) That no trade association be lawful unless registered.

(5) That provision should be made in the statute appointing the new Registrar that the liability of members of the association for any debts of the association should be limited to the amount of any outstanding subscriptions or levies as is the position under the Associations Incorporation Act.

(6) That the Act appointing the new Registrar should name "an appointed day" to be proclaimed by the Governor so as to give ample time for the associations to comply

with the Act prior to which day the association must make application for registration as prescribed.

(7) That no such association be registered unless—

(i) its rules accurately and fully define the qualifications for membership of the association so that an applicant for membership may be aware of the qualifications;

(ii) its rules set out the entrance fee payable for membership;

(iii) its rules set out the annual subscription payable by members and the method by which any levies in addition to membership fees are to be assessed or the annual subscription varied;

(iv) such association supplies the Registrar with a copy of its rules and regulations at the time of application and subsequently any amendments which are agreed to from time to time and which rules and regulations shall fully set out the powers of such association including those dealing with—

(a) any penalties which may be imposed on members;

(b) price maintenance regulation or control;

(c) control or channelling of supply of goods and services by, to, or through its members;

(v) its rules contain in addition, such rules governing the holding of meetings, the appointment of committees of management, election of officers, the admission of members and other matters as are usual in the rules of incorporated associations.

(8) That provision be made for notification in writing to be given to the Registrar of the place where the office of the association is situated and the name of the secretary, and that the Registrar be likewise notified from time to time in writing within 28 days of any changes therein.

(9) That every such association when registered be a body corporate with the usual powers given to incorporated associations in regard to property, income and the like.

(10) That the Registrar should have power to hear complaints that the rules have not been complied with and to report thereon to the Minister.

(11) That when the Registrar makes any report to the Minister as provided in recommendation (10), the Minister may direct the Registrar to take proceedings in respect of the complaint which may be heard before a stipendiary magistrate—penalty not exceeding £250 for a first offence and £500 for a second or subsequent offence.

The Registrar shall also make an annual report before the 31st day of October in each year on the operations generally under the Act for the year ending the 30th day of June next proceeding and may include the conclusions of the Registrar on the operations of trade associations and such comments on the rules of such associations as the Registrar may deem advisable.

Such report shall be laid upon the table of both Houses of Parliament within seven (7) days of its being received if Parliament is then sitting and if not within seven (7) days of the first sitting day of Parliament thereafter.

(12) (a) That collusive tendering be prohibited and a substantial penalty provided.

(b) That no association be registered whose objects or powers contemplate collusive tendering.

(c) That collusive tendering be defined as—

“the submission by two or more persons of tenders, in response to a public invitation, the amounts of which have been agreed between the persons tendering which agreement is contrary to the public interest.”

(13) That proceedings for any offence in respect of collusive tendering shall only be taken with the consent of the Attorney General.

(14) That the fees for the registration of associations, agreements, etc., shall be kept as low as possible.

(15) That the regulating or controlling of goods or services or the distribution thereof by any trade association should, we feel, not be considered detrimental to the public interest if—

- (a) they are clearly necessary to protect the public against injury;
- (b) the absence of them would deny substantial benefits to the public;
- (c) they constitute a necessary protection against an unfair monopolist;
- (d) they are likely to reduce unemployment or increase employment.

There may be other grounds but only experience can indicate them.

(16) Copies of any agreement and/or terms of any understanding made or entered into by any trade association with any other association or corporation in or out of Western Australia, which shall be verified by statutory declaration, shall be lodged with the Registrar within a stipulated time of the date on which they are executed if any such agreement or understanding contains any provisions whereby the prices of any goods or services are to be regulated or controlled.

(17) That all statutory boards acting in respect of primary production should, as they are acting under statute, be exempt from our recommendations.

(18) That agreements between trade associations as employers and employees, provided they are subject to industrial laws, be also exempt from these recommendations.

20.—MAJORITY RECOMMENDATION.

Your Commissioners with the exception of Messrs S. E. Lapham, and S. Heal, M's.L.A., desire to make the following recommendation:—

(19) That the Unfair Trading and Profit Control Act, 1956, be not continued but be replaced by an Act to be known as the Trade Associations Registration Act embodying the foregoing recommendations of this Commission and such other ancillary matters as may be necessary to give effect to such recommendations and which Act shall appoint the Registrar of Trade Associations.

The opinion of the majority of your Commissioners is that the incidence of the restrictive practices to which we have referred, at present is comparatively limited in this State and in these circumstances it is to be expected that legislation such as is proposed will be sufficient—

- (i) to bring such practices under public notice;
- (ii) to restrain their extension; and
- (iii) to enable Parliament say in the next three years to ascertain if these opinions prove correct and if not, to consider amendments to the legislation calculated to produce the desired results.

21.—COMMENT BY THE CHAIRMAN.

The Chairman (Hon. A. F. Watts, M.L.A.) considers it is desirable to quote from an opinion received from the Solicitor General (Mr. S. H. Good, Q.C.) in response to an inquiry made of him by the Commission. The Solicitor General stated inter alia—

English law has always been opposed to monopolies, to allowing any person “to secure the sole exercise of any trade throughout the country.” In my opinion the Royal Commission would be justified in its recommendation regarding monopolising in ignoring possible conflict with section 92 (of the Australian Constitution). In his final paragraph he states—

So far as I can see the proposed legislation would be likely to prove ineffective . . . unless there is a prohibition against acts of monopolising . . . and some authority, e.g., the Registrar, is empowered to inquire . . . Then some other authority would need power to make orders and to enforce compliance therewith.

Therefore the Chairman of the Commission is also of the opinion that the proposed Trade Association Registration Act should include the right for the Registrar to report to the Minister upon any combination of two or more persons that he has reason to believe seeks to monopolise any part of the trade or commerce of the State contrary to the public interest, where previously there has been free competition. When the Registrar makes any such report the Minister may cause the matter to be referred for hearing before a Judge of the Supreme Court preferably in chambers who, if satisfied of the existence of, or the attempt to create such a monopoly, may order that the arrangement be set aside or not proceeded with or make such order as is necessary to eliminate therefrom any feature considered undesirable in the public interest. Any person who acts contrary to any such order shall be guilty of an offence and be subject to a penalty not exceeding £500.

22.—MINORITY RECOMMENDATION.

The alternative comments and recommendation of Messrs. S. E. Lapham and S. Heal, M's.L.A., are as follows:—

We concur with the recommendations contained in the body of this report, i.e., recommendations (1) to (18), subject to the following exception:—

Recommendation (19)—We object to the inclusion of this recommendation and recommend that it be replaced with the following:—

(19) That legislation be provided for the inclusion of the recommendations of this Commission where not in conflict with this recommendation and such other ancillary matters as may be necessary to give effect to such recommendations, and provide for investigation and inquiry, and that the prevention of unfair profit taking, unfair methods of trading, and unfair methods of trade competition, and all other matters to give effect to their prevention be dealt with under the Unfair Trading and Profit Control Act, 1956, which Act, we strongly recommend should be continued.

23.—CONCLUSION.

May we conclude by pointing out that the Commission's task has not been an easy one.

The matters involved in its terms of reference have clearly been regarded as problems of importance in many countries of the world. The Commission has done its best to recognise the complexities of modern business and the problems facing those engaged in trade and commerce in a developing State while at the same time ensuring that methods and practices which can be detrimental to the public interest do not develop unduly.

At this stage perhaps it might be appropriate to repeat a quotation made the Lord Chancellor, Lord Kilmuir, in the House of Lords—

I believe that the law, although deeply rooted in the history of the institutions of our country, is not an heirloom which is to be taken down, dusted, reverently considered and placed back. I believe that the law is as effective a dynamic force in modern problems as it is soundly based on these historical roots. Therefore, I believe that the law should be brought in to help in the solution of the great problems of a modern State.

Through a series of circumstances the Commission had the unique experience of being served by three different secretaries but it would not be fitting to close this report without recording the Commission's appreciation for the valuable assistance rendered by each officer, especially that of Mr. R. Travers the third appointee upon whom fell the greater part of the work and who carried out his duties courteously and effectively.

The success of any inquiry depends to a large extent on the correct reporting of evidence and once again the Chief Hansard Reporter and his staff with their usual ready co-operation carried out the reporting in a most efficient manner and with a promptness that greatly facilitated the Commission's task.

Your Commission would also like to commend the Officers and Staff of Parliament who so frequently went out of their way to assist the Commission and meet the numerous requests that were made.

(Sgd.) A. F. WATTS,
Chairman.

(Sgd.) C. C. PERKINS,
Member.

(Sgd.) C. W. M. COURT,
Member.

(Sgd.) S. E. LAPHAM,
Member.

(Sgd.) S. HEAL,
Member.

7/11/57.

APPENDIX "A."

Meetings of the Select Committee.

Wednesday, 26th September, 1956.

The Committee met at 11 a.m.

Present.—Messrs. C. W. M. Court, S. Heal, S. E. Lapham, C. C. Perkins and A. F. Watts.

Appointment of Chairman.—It was resolved that Hon. A. F. Watts be the Chairman of the Committee.

Business.—It was resolved that a request be made for a Secretary from outside Parliament House and if possible some person experienced in contacting industrial and commercial concerns.

It was resolved that advertisements notifying the public of the Committee's appointment be inserted in "The West Australian" and "Sunday Times."

Next Meeting.—It was agreed that the arranging of the next meeting be left to the Chairman.

Thursday, 18th October, 1956.

Present.—Hon. A. F. Watts, Chairman; Messrs. C. W. M. Court, S. Heal, S. E. Lapham and C. C. Perkins.

Witnesses.—Two witnesses were examined.
The Committee adjourned at 11.30 a.m.

Thursday, 25th October, 1956.

The Committee met at 10.15 a.m.

Present.—Hon. A. F. Watts, Chairman; Messrs. C. W. M. Court, S. Heal, S. E. Lapham and C. C. Perkins.

Witnesses.—Two witnesses were examined.
The Committee adjourned at 12.30 p.m.

Tuesday, 6th November, 1956.

The Committee met at 10.15 a.m.

Present.—Hon. A. F. Watts, Chairman; Messrs. C. W. M. Court, S. Heal, S. E. Lapham and C. C. Perkins.

Witnesses.—Two witnesses were examined.
The Committee adjourned at 12.30 p.m.

Thursday, 8th November, 1956.

The Committee met at 10.30 a.m.

Present.—Hon. A. F. Watts, Chairman; Messrs. C. W. M. Court, S. Heal, S. E. Lapham and C. C. Perkins.

Witnesses.—Four witnesses were examined.
The Committee adjourned at 12.30 p.m.

Thursday, 22nd November, 1956.

The Committee met at 10.30 a.m.

Present.—Hon. A. F. Watts, Chairman; Messrs. C. W. M. Court, S. Heal, S. E. Lapham and C. C. Perkins.

Witnesses.—Two witnesses were further examined.

The Committee adjourned at 12.30 p.m., until the New Year by which time it was anticipated that it would be appointed an Honorary Royal Commission.