Restraints of Trade Act 1976 No 67

Status information

Currency of version
Historical version for 8 December 2000 to 7 January 2015 (generated 14 January 2015 at 15:18). Legislation on the NSW legislation website is usually updated within 3 working days.

Provisions in force
All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes.

Does not include amendments by:
Statute Law (Miscellaneous Provisions) Act (No 2) 2014 No 88 (not commenced — to commence on 8.1.2015)
New South Wales

Restraints of Trade Act 1976 No 67

Contents

<table>
<thead>
<tr>
<th></th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Name of Act</td>
</tr>
<tr>
<td>2</td>
<td>Definitions</td>
</tr>
<tr>
<td>3</td>
<td>Application of Act</td>
</tr>
<tr>
<td>4</td>
<td>Extent to which restraint of trade valid</td>
</tr>
</tbody>
</table>

Notes

<table>
<thead>
<tr>
<th></th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Table of amending instruments</td>
</tr>
<tr>
<td>2</td>
<td>Table of amendments</td>
</tr>
</tbody>
</table>
Restraints of Trade Act 1976 No 67

An Act relating to restraints of trade.

Historical version valid from 8.12.2000 to 7.1.2015 (generated on 14.01.2015 at 15:18)
1 Name of Act

This Act may be cited as the Restraints of Trade Act 1976.

2 Definitions

(1) In this Act:

- association includes a corporation.
- public policy means public policy in respect of restraint of trade.
- rules includes memorandum and articles of association of a corporation and provisions of the constitution of an unincorporated association.

(2) In this Act, except in subsection (1), restraint of trade means a restraint of trade created by contract, created by the rules of an association, or otherwise created.

(3) Notes included in this Act do not form part of this Act.

3 Application of Act

(1) This Act does not apply to or in respect of a restraint of trade created before the date of assent to this Act.

(2) This Act applies notwithstanding any stipulation to the contrary.

(3) This Act does not affect the operation of:

(a) section 304 of the Industrial Relations Act 1996,
(b) section 78 of the Co-operatives Act 1992,
(c) any other enactment relating to the validity of a restraint of trade.


4 Extent to which restraint of trade valid

(1) A restraint of trade is valid to the extent to which it is not against public policy, whether it is in severable terms or not.

(2) Subsection (1) does not affect the invalidity of a restraint of trade by reason of any matter other than public policy.

(3) Where, on application by a person subject to the restraint, it appears to the Supreme Court that a restraint of trade is, as regards its application to the applicant, against public policy to any extent by reason of, or partly by reason of, a manifest failure by a person who created or joined in creating the restraint to attempt to make the restraint a reasonable restraint, the Court, having regard to the circumstances in which the restraint was created, may, on such terms as the Court thinks fit, order that the restraint be, as regards its application to the applicant, altogether invalid or valid to such extent only (not exceeding the extent to which the restraint is not against public policy) as the Court thinks fit and any such order shall, notwithstanding sub-section (1), have effect on and from such date (not being a date earlier than the date on which the order was made) as is specified in the order.

(4) Where, under the rules of an association, a person who is a member of the association is subject to a restraint of trade, the association shall, for the purposes of subsection (3), be deemed to have created or joined in creating the restraint.

(5) An order under subsection (3) does not affect any right (including any right to damages) accrued before the date the order takes effect.
Historical notes

The following abbreviations are used in the Historical notes:

Am amended LW legislation website Sch Schedule
Cl clause No number Schs Schedules
Cll clauses p page Sec section
Div Division pp pages Secs sections
Divs Divisions Reg Regulation Subdiv Subdivision
GG Government Gazette Regs Regulations Subdivs Subdivisions
Ins inserted Rep repealed Subst substituted

Table of amending instruments

Restrains of Trade Act 1976 No 67. Assented to 15.11.1976. This Act has been amended as follows:

Date of commencement of Sch 4.44, 4 months after assent, sec 2 (4).

Date of commencement of Sch 6.20, 1.9.2000, sec 2 and GG No 112 of 1.9.2000, p 8633.

Date of commencement of Sch 1.22, assent, sec 2 (2).

Table of amendments

Sec 2 Am 2000 No 93, Sch 1.22 [1].
Sec 3 Am 1996 No 121, Sch 4.44; 1998 No 11, Sch 6.20; 2000 No 93, Sch 1.22 [2].
Sec 3, note Ins 2000 No 93, Sch 1.22 [3].