

New South Wales



ANNO VICESIMO QUINTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 67, 1976.**

An Act relating to restraints of trade. [Assented to, 15th  
November, 1976.]

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*Restraints of Trade.*

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**B**E it enacted by the Queen'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:—

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

2. (1) In this Act—

Interpreta-  
tion.

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

Applica-  
tion of  
Act.

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

(3)

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*Restraints of Trade.*


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

- (a) section 3 of the Trade Union Act, 1881;
- (b) Part II of the Monopolies Act, 1923;
- (c) section 77 of the Co-operation Act, 1923; or
- (d) any other enactment relating to the validity of a restraint of trade.

**Extent  
to which  
restraint  
of trade  
valid.**

4. (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 subsection (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)

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(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.

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