

Restraints of Trade Act 1976 No 67

[1976-67]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

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Restraints of Trade Act 1976 No 67



New South Wales

An Act relating to restraints of trade.

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(b) (Repealed)

(c) section 125 of the *Co-operatives National Law (NSW)*, or

(d) any other enactment relating to the validity of a restraint of trade.

Note—

The *Competition Code of New South Wales* and the *Trade Practices Act 1974* of the Commonwealth make provision in relation to restraints 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.