

Industries Assistance Commission Act 1973

No. 169 of 1973

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SCHEDULE

Acts Repealed

Industries Assistance Commission Act 1973

No. 169 of 1973

AN ACT

To establish an Industries Assistance Commission.

[Assented to 11 December 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the *Industries Assistance Commission Act* 1973. Short title.
2. This Act shall come into operation on a date to be fixed by Proclamation. Commence-
ment.
3. (1) The Acts specified in the Schedule are repealed. Repeal,
saving and
transitional.
(2) Where the Tariff Board is referred to in a provision of any other Act, the reference to the Tariff Board in that provision shall, except in relation to reports made by the Tariff Board before the commencement of this Act, be construed as a reference to the Commission.

(3) Where, before the commencement of this Act, a matter had been referred to the Tariff Board for inquiry and report but the Tariff Board had not commenced to inquire into that matter, the Commission shall inquire into and report on the matter as if the matter had been duly referred to the Commission for inquiry and report under this Act.

(4) Where, before the commencement of this Act, the Tariff Board had commenced, but had not completed, an inquiry into a matter, the Commission shall complete the inquiry and furnish a report on that matter as if the matter had been duly referred to the Commission for inquiry and report under this Act and, for the purpose of completing the inquiry and furnishing the report, the Commission may have regard to any evidence given, or books or documents produced, to the Tariff Board in respect of that matter.

(5) Where, before the commencement of this Act, the Tariff Board had completed an inquiry into a matter but had not furnished a report on that matter, the Commission shall furnish a report on that matter as if the matter had been duly referred to the Commission for inquiry and report under this Act and, for the purpose of preparing the report, the Commission may have regard to any evidence given, or books or documents produced, to the Tariff Board in respect of that matter.

(6) Notwithstanding the repeals effected by sub-section (1), Parts III and V of the *Tariff Board Act 1921-1972* continue in force for the purpose of enabling a special advisory authority appointed under that Act to complete an inquiry that was commenced before the commencement of this Act and to furnish a report in respect of that inquiry, but any such report shall be furnished by the authority to the Minister administering this Act.

Inter-
pretation.

4. (1) In this Act, unless the contrary intention appears—

“ Associate Commissioner ” means an Associate Commissioner of the Commission;

“ Chairman ” means the Chairman of the Commission and includes a person acting as Chairman of the Commission;

“ Commission ” means the Industries Assistance Commission established by this Act, and includes a Division of that Commission performing functions of that Commission;

“ Commissioner ” means a Commissioner of the Commission and includes the Chairman and a person appointed to act as a Commissioner;

“ duties ” means duties of customs but does not include duties of customs imposed in accordance with the *Customs Tariff (Dumping and Subsidies) Act 1961-1965*;

“ goods ” includes—

(a) animals, poultry and fish; and

(b) minerals, trees and crops, whether on, under or attached to land or not;

“ industry ” includes any business or activity concerned with or related to the production or supply of goods or the supply of services;

“ meeting ”, in relation to the Commission, includes a sitting of the Commission for the purpose of taking evidence;

“ production ”, in relation to goods being minerals, includes recovery and treatment.

(2) For the purposes of this Act—

(a) a reference to assistance includes a reference to assistance by way of the imposition of duties or the doing of any other act that would in any way, directly or indirectly, assist a person to carry on a business or activity or confer a pecuniary benefit on, or result in a pecuniary benefit accruing to, a person in respect of the carrying on of a business or activity;

(b) a reference to the provision of financial assistance is a reference to the provision of assistance by way of making payments of moneys to persons engaged in the industry concerned, but does not include a reference to the provision of assistance by way of making such payments where equivalent amounts of moneys have been raised by a tax imposed on the industry for the purpose of providing the assistance;

(c) a reference to assistance, or financial assistance, by the Australian Government is a reference to such assistance—

(i) under a law of Australia passed for the purpose of providing assistance to the industry concerned;

(ii) under an appropriation made by a law of Australia, being an appropriation made for the purpose of providing assistance to the industry concerned; or

(iii) under a scheme formulated for the purpose of providing assistance to the industry concerned, being a scheme that is wholly or partly dependent for its operation on, or on the doing of any act under, such a law or on the making of payments out of such an appropriation; and

(d) the payment of moneys to a body corporate established for a public purpose by or under a law of Australia or of a State or Territory, being a body corporate that is engaged in an industry, shall be deemed not to constitute the provision of financial assistance to that industry except to the extent, if any, to which the moneys are applied by that body corporate in providing financial assistance to other persons engaged in that industry.

PART II—CONSTITUTION OF COMMISSION

Establishment of Commission.

5. (1) There is hereby established an Industries Assistance Commission, which shall consist of not less than five or more than nine Commissioners.

(2) The Commissioners shall be appointed by the Governor-General.

(3) The exercise of the powers and the performance of the duties and functions of the Commission are not affected by reason only of the number of Commissioners appointed by the Governor-General falling below five for a period of not more than three months.

Outside employment.

6. (1) Except with the consent of the Minister, a Commissioner shall not engage in paid employment outside the duties of his office.

(2) For the purposes of sub-sections 4 (3A) and (4) of the *Superannuation Act 1922-1973* each Commissioner shall be deemed to be required, by the terms of his appointment, to give the whole of his time to the duties of his office.

Period of appointment.

7. (1) A Commissioner shall be appointed for such period, not exceeding five years, as is specified in the instrument of his appointment, but, subject to this Act, is eligible for re-appointment.

(2) A person who has attained the age of sixty-five years shall not be appointed or re-appointed as a Commissioner and a person shall not be appointed or re-appointed as a Commissioner for a period that extends beyond the date on which he will attain the age of sixty-five years.

(3) A Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

Associate Commissioners.

8. (1) The Minister, after consultation with the Chairman, may appoint persons to be Associate Commissioners.

(2) An Associate Commissioner shall be appointed either—

- (a) for such period, not exceeding five years, as is specified in the instrument of his appointment; or
- (b) for a period commencing on a day specified in the instrument of his appointment and ending on the day on which the Commission completes its inquiry and report in relation to a matter specified in that instrument,

but is eligible for re-appointment.

(3) Subject to this Part, an Associate Commissioner holds office on such terms and conditions as the Minister determines.

(4) An Associate Commissioner shall be deemed to be a Commissioner for the purposes of the exercise of any powers, or the performance of any functions or duties, of a Commissioner in relation to an inquiry and report by a Division of the Commission of which the Associate Commissioner is a member, and, unless the contrary intention appears, a

reference in this Act to a Commissioner shall, for those purposes, be construed as including a reference to an Associate Commissioner.

9. (1) The Governor-General shall appoint a person who is, or is to be, a Commissioner to be the Chairman of the Commission. **Chairman of Commission.**

(2) It is the duty of the Chairman to ensure the efficient and orderly conduct of the business of the Commission and, for that purpose, he has, in addition to any other power, duty or function under this Act, power—

- (a) to convene meetings of the Commission;
- (b) to determine the form of the records of meetings of the Commission to be kept in accordance with this Act and the procedure to be adopted at such meetings; and
- (c) to direct and control travel by Commissioners in connexion with their duties.

(3) A power of the Chairman under paragraph (2) (a) or (b) shall be exercised, as far as practicable, only after consultation with the Commissioners.

10. (1) The Chairman may, by writing signed by him, delegate any of his powers, duties and functions under this Act (except this power of delegation) to a Commissioner or an Associate Commissioner. **Delegation by Chairman.**

(2) A power, duty or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation but, where it is so delegated to an Associate Commissioner, it shall not be exercised or performed except for the purposes of an inquiry and report to be made by a Division of the Commission of which he is a member.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a duty or function by the Chairman.

(4) A delegation under this section continues in operation during an absence or suspension of the Chairman, or during a vacancy in the office of Chairman, unless and until it is revoked by the Commissioner acting as Chairman during the absence, suspension or vacancy.

11. (1) The Chairman may appoint one of the Commissioners to be the Executive Commissioner. **Executive Commissioner.**

(2) A Commissioner who is appointed to be the Executive Commissioner shall assist the Chairman in the performance of his duties and the exercise of his powers.

12. (1) The Chairman, the other Commissioners and the Associate Commissioners shall be paid remuneration at such respective rates, and annual allowances at such respective rates (if any), as are fixed by the Parliament but, until 1 July 1974, the rates of that remuneration and the rates (if any) of those allowances shall be as prescribed. **Remuneration and allowances.**

(2) The Chairman, the other Commissioners and the Associate Commissioners shall be paid such other allowances (not including an annual allowance) as are prescribed.

Leave of absence.

13. (1) The Minister may grant to a Commissioner, or to an Associate Commissioner who is engaged full-time on business of the Commission, leave of absence on such terms and conditions as to remuneration and otherwise as the Minister determines.

(2) The Minister may, by writing signed by him, delegate to the Chairman his powers under sub-section (1) in relation to Commissioners (other than the Chairman) and Associate Commissioners.

(3) A power so delegated may be exercised by the Chairman in accordance with the instrument of delegation.

(4) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Minister.

Resignation of Commissioners.

14. (1) A Commissioner may resign his office by writing signed by him and delivered to the Governor-General.

(2) An Associate Commissioner may resign his office by writing signed by him and delivered to the Minister.

Retirement from office.

15. The Governor-General may, with the consent of the Commissioner, retire a Commissioner from office on the ground of invalidity.

Suspension and removal from office.

16. (1) The Governor-General may suspend a Commissioner or an Associate Commissioner from office on the ground of misbehaviour or physical or mental incapacity.

(2) Where the Governor-General suspends a Commissioner or an Associate Commissioner from office, the Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within seven sitting days of the House after the suspension.

(3) Where such a statement has been laid before a House of the Parliament, that House may, within fifteen sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Commissioner or Associate Commissioner should be restored to office and, if each House so passes a resolution, the Governor-General shall terminate the suspension.

(4) If, at the expiration of fifteen sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may remove the Commissioner or Associate Commissioner from office.

(5) If a Commissioner or Associate Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Governor-General shall remove him from office.

(6) A Commissioner or Associate Commissioner shall not be removed from office except as provided by this section.

(7) Where a Commissioner or Associate Commissioner who is contributing to the Superannuation Fund under the *Superannuation Act 1922-1973* is removed from office under sub-section (4) on the ground of physical or mental incapacity, he shall be deemed, for the purposes of that Act, to have been retired on the ground of invalidity on the day on which he was suspended from office.

(8) A Commissioner or Associate Commissioner who is suspended from office under this section is not entitled to be paid any remuneration or allowances in respect of the period of his suspension unless he is restored to office.

17. (1) Where a Commissioner is, or is expected to be, absent from duty or from Australia or is suspended, or the number of Commissioners has fallen below five, the Minister may appoint a person, including an Associate Commissioner, to act as a Commissioner during the absence or suspension or until the number of Commissioners ceases to be below five. Acting appointments.

(2) A person appointed to act as a Commissioner by reason of the number of Commissioners falling below five shall not act as a Commissioner in pursuance of that appointment after the expiration of twelve months from the date on which the number of Commissioners fell below five.

(3) Where the Chairman is, or is expected to be, absent from duty or from Australia or is suspended, or there is, or is expected to be, a vacancy in the office of Chairman, the Minister may appoint a Commissioner to act as Chairman during the absence or suspension or until the filling of the vacancy.

(4) A person appointed to act as Chairman during a vacancy in the office of Chairman shall not act as Chairman after the expiration of twelve months after the occurrence of the vacancy.

(5) The Minister may at any time terminate an appointment made by him under this section.

(6) Subject to this section, a person acting in an office in pursuance of this section shall act in that office on such terms and conditions as the Minister determines.

(7) The validity of a decision of the Commission shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment under this section had ceased to have effect.

**Meetings of
Commission.**

18. (1) Subject to sub-section 9 (3) and to this section, the Chairman shall convene such meetings of the Commission as he thinks necessary for the efficient performance of the functions of the Commission.

(2) Meetings of the Commission shall be held at such places as the Chairman determines.

(3) The Chairman shall preside at all meetings of the Commission.

(4) The Commission shall keep records of its meetings.

(5) Subject to this Act, the Chairman may give directions regarding the procedure to be followed at or in connexion with a meeting of the Commission.

(6) At a meeting of the Commission—

(a) the Chairman and three other Commissioners form a quorum;

(b) all questions shall be decided by a majority of votes of the Commissioners present and voting; and

(c) the Chairman has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) This section has effect subject to section 19.

**Chairman
may
authorize
Commission
to sit in
Divisions.**

19. (1) For the purposes of an inquiry and report in relation to a matter, the Chairman may, by writing signed by him, determine that the powers of the Commission under this Act may be exercised by a Division of the Commission constituted by the Chairman and such other Commissioner as is, or Commissioners as are, specified in the determination.

(2) Where the Chairman has made a determination under sub-section (1), he may, by writing signed by him, at any time before the Division of the Commission specified in the determination has completed the inquiry and report, amend the determination in relation to the constitution of the Division or in any other respect, and, where the constitution of a Division of the Commission is changed, the Division as constituted after the change may complete the inquiry and report.

(3) If—

(a) a determination under sub-section (1) provides for the powers of the Commission under this Act for the purposes of an inquiry and report in relation to a matter to be exercised by a Division of the Commission of which an Associate Commissioner is a member; and

(b) that Associate Commissioner was appointed for the period ending on the day on which the Commission completes the inquiry and report in relation to that matter,

sub-section (2) does not entitle the Chairman to amend the determination in a way that would result in that Associate Commissioner ceasing to be a member of that Division.

(4) For the purposes of an inquiry and report on a matter specified in a determination made under sub-section (1), the Commission shall be deemed to consist of the Division of the Commission specified in the determination.

(5) The Chairman is not required to attend a meeting of a Division of the Commission (including a meeting at which a report to be made by the Division is considered) if he does not think fit to do so and, in that case, sub-section 18 (3) does not apply in relation to a meeting of that Division.

(6) At a meeting of a Division of the Commission at which the Chairman is not present, a Commissioner nominated for the purpose by the Chairman shall preside.

(7) At a meeting of a Division of the Commission constituted by three or more Commissioners, two Commissioners form a quorum.

(8) A Division of the Commission may meet and exercise powers of the Commission under this Act notwithstanding that another Division of the Commission is meeting and exercising powers of the Commission at the same time.

(9) In this section, "Commissioner" includes an Associate Commissioner.

20. (1) The Chairman shall give written notice to the Minister of all direct and indirect pecuniary interests that he has or acquires in any business carried on in Australia or in any body corporate carrying on any such business.

Disclosure
of financial
interests.

(2) Where a Commissioner (other than the Chairman) or an Associate Commissioner has or acquires any direct or indirect pecuniary interest in any business carried on in Australia, or in any body corporate carrying on any such business, being an interest that could be in conflict with his duties as a Commissioner or Associate Commissioner, he shall, to the best of his knowledge, disclose that interest to the Chairman.

(3) A Commissioner shall not exercise any power by this Act conferred upon him in any matter in which he has a direct or indirect pecuniary interest unless his interest—

(a) is recorded in the minutes, and

(b) is disclosed in any report in which he participates.

PART III—FUNCTIONS AND POWERS OF COMMISSION

21. The functions of the Commission are to hold inquiries and make reports to the Minister, in accordance with this Act, in respect of matters affecting assistance to industries and other matters that may be referred to the Commission in accordance with this Act.

Functions of
Commission.

22. (1) In the performance of its functions, the Commission shall have regard to the desire of the Australian Government, in pursuing the general objectives of national economic and social policy and urban and regional development, to improve and promote the well-being of the

Policy
guidelines for
Commission.

people of Australia, with full employment, stability in the general level of prices, viability in external economic relations, conservation of the natural environment and rising and generally enjoyed standards of living, and, in particular, to the desire of the Australian Government to—

- (a) improve the efficiency with which the community's productive resources are used;
- (b) encourage those economic activities in Australia, and the producers of the goods and services concerned, which contribute to improving the efficiency with which the community's productive resources are used;
- (c) facilitate adjustment to changes in the economic environment by industries and persons affected by those changes;
- (d) recognize the interests of consumers and consuming industries likely to be affected by measures proposed by the Commission;
- (e) ensure that any measures for assistance to, and development of, industries are integrated with national economic policy as a whole;
- (f) ensure that Australia's trade and protection policies are compatible; and
- (g) provide adequate scope for public scrutiny and evaluation of the basis of the Commission's reports.

(2) Sub-section (1) applies in relation to the performance by a Commissioner or Associate Commissioner of functions under Part IV in like manner as it applies in relation to the performance of functions by the Commission and, for the purposes of any application of sub-section (1) by virtue of this sub-section, a reference in sub-section (1) to the Commission shall be construed as a reference to the Commissioner or Associate Commissioner concerned.

Reference of matters to Commission.

23. (1) The Minister may refer to the Commission for inquiry and report any matter relating to the giving, continuance or withdrawal of assistance to an industry or to a particular group or groups of primary or secondary industries by the Australian Government, and may, when so referring a matter, specify a period within which the Commission is to report on that matter.

(2) Where a matter is so referred, the Commission shall inquire into, and report to the Minister on, that matter, but may give consideration to the necessity for any form of assistance in respect of the industry or to a particular group or groups of primary or secondary industries concerned and report accordingly.

(3) The Minister shall not take any action in respect of any of the matters specified in sub-section (4), being action that is related to the provision of assistance to a particular primary or secondary industry or to a particular group or groups of primary or secondary industries but not being action that is necessary in order to implement the policy of the Australian Government—

- (a) in relation to, or in relation to negotiations for, bilateral or multilateral trade agreements; or

(b) in relation to tariff preferences for developing countries, unless he has received a report of the Commission in relation to that matter under this Act or, if the Minister referred that matter to the Commission for inquiry and report and, when so referring that matter, specified a period within which the Commission was to report on that matter, thirty days have elapsed since the expiration of that period, but nothing in this sub-section prevents action being taken to provide assistance to an industry or to a particular group or groups of primary or secondary industries in accordance with, or for the purposes of, a law of Australia that was passed or made before the commencement of this Act or to provide financial assistance to an industry or to a particular group or groups of primary or secondary industries in accordance with, or for the purposes of, a law of Australia that is passed or made after the commencement of this Act and before 1 July 1974.

(4) The matters referred to in sub-section (3) are—

- (a) whether duties should be imposed on goods of a particular description imported into Australia;
- (b) whether duties imposed on goods of a particular description imported into Australia should be removed or the rates of those duties should be increased or reduced;
- (c) whether the importation of goods of a particular description into Australia should be prohibited or restricted;
- (d) whether a prohibition on the importation of goods of a particular description into Australia should be removed;
- (e) whether a restriction on the importation of goods of a particular description into Australia should be extended, reduced or removed;
- (f) whether financial assistance for a period exceeding two years should be provided to an industry or to a particular group or groups of primary or secondary industries by the Australian Government, whether or not any financial assistance has previously been provided to that industry or to a particular group or groups of primary or secondary industries by the Australian Government;
- (g) whether financial assistance for a period not exceeding two years should be provided by the Australian Government to an industry or to a particular group or groups of primary or secondary industries to which financial assistance (not being financial assistance provided after inquiry and report by the Commission or the Tariff Board) has previously been provided by the Australian Government, where—
 - (i) the period, or the sum of the periods, of the financial assistance that has previously been so provided (excluding so much of that period or those periods as occurred more than six years before the commencement of the period of the proposed further financial assistance or occurred before the commencement of this Act) is not less than two years; or

- (ii) the sum of so much of the period or periods of the financial assistance that has previously been so provided as is required to be taken into account under subparagraph (i) and the period of the proposed further financial assistance exceeds two years; or
 - (h) whether financial assistance that has been provided to an industry or to a particular group or groups of primary or secondary industries by the Australian Government for a period exceeding two years should be suspended or withdrawn or the rate of that financial assistance should be increased or reduced.
- (5) Without limiting the generality of sub-section (1), the Minister may refer to the Commission for inquiry and report any of the following matters:—
- (a) where any action by the Minister for Customs and Excise under the *Customs Tariff (Dumping and Subsidies) Act 1961–1965* may be taken only if he is satisfied as to certain facts after inquiry and report by the Commission—a question as to the existence of any such facts;
 - (b) any matter in connexion with the interpretation of any Customs Tariff or Excise Tariff, or the classification of goods in any such Tariff, that has been referred to the Minister for Customs and Excise for review;
 - (c) whether goods not prescribed by a by-law or not specified in a determination for the purposes of a Customs Tariff Item or Excise Tariff Item should be so prescribed or specified;
 - (d) whether goods prescribed by a by-law or specified in a determination for the purposes of a Customs Tariff Item or Excise Tariff Item should continue to be so prescribed or specified;
 - (e) the question of the value for duty of goods under section 160 of the *Customs Act 1901–1973*;
 - (f) a matter relating to the addition of goods to the goods that are to remain or become free from duties in accordance with an agreement between the Australian Government and the New Zealand Government;
 - (g) a matter relating to the giving of concessions in respect of duties to goods that are the produce or manufacture of developing countries; and
 - (h) the reduction or removal of duties or other forms of assistance to industries in connexion with negotiations for bilateral or multilateral trade agreements.
- (6) The Minister may, either generally or otherwise as provided by the instrument of authorization, by writing signed by him, authorize another Minister to exercise the powers conferred on the first-mentioned Minister under paragraphs (5) (a) to (e) and, where such an authorization is given, the Minister to whom the authorization is given may exercise those powers

in accordance with the authorization, but nothing in this sub-section prevents the first-mentioned Minister from exercising any of those powers.

24. (1) Where—

- (a) duties are imposed on goods of a particular description imported into Australia; and
- (b) a period of not less than ten years has elapsed since—
 - (i) the date on which the duties on goods of that description were first imposed; or
 - (ii) where, since that date, the Commission or the Tariff Board has made an inquiry and report in relation to the assistance that should be provided to the industry producing goods of that description—the date on which that report was furnished,

Power of Commission to inquire and report on its own initiative.

the Commission may on its own initiative inquire into and report on the assistance that should be provided to the industry producing goods of that description.

(2) Where—

- (a) assistance, other than assistance by way of the imposition of duties on goods imported into Australia, is provided to an industry by the Australian Government; and
- (b) a period of not less than six years has elapsed since—
 - (i) the date on which the assistance was first provided; or
 - (ii) where, since that date, the Commission or the Tariff Board has made an inquiry and report in relation to the assistance that should be provided to that industry—the date on which that report was furnished,

the Commission may on its own initiative inquire into and report on the assistance that should be provided to that industry.

(3) The Commission may on its own initiative inquire into and report on any of the following matters:—

- (a) where any action by the Minister for Customs and Excise under the *Customs Tariff (Dumping and Subsidies) Act 1961–1965* may be taken only if he is satisfied as to certain facts after inquiry and report by the Commission—a question as to the existence of any such facts;
- (b) whether goods not prescribed by a by-law or not specified in a determination for the purposes of a Customs Tariff Item or Excise Tariff Item should be so prescribed or specified; and
- (c) whether goods prescribed by a by-law or specified in a determination for the purposes of a Customs Tariff Item or Excise Tariff Item should continue to be so prescribed or specified.

(4) The Commission shall not commence to hold an inquiry on a matter in pursuance of sub-section (1) or (2) before the expiration of six months after it has notified the Minister that it proposes to hold the inquiry.

PART IV—TEMPORARY ASSISTANCE

Temporary Assistance Authority.

25. (1) There shall be a Temporary Assistance Authority, comprising not more than three persons, appointed by the Governor-General on a full-time or on a part-time basis as appropriate.

(2) Members of the Temporary Assistance Authority shall hold office under such terms and conditions as the Governor-General determines.

Request by Minister for inquiry by Temporary Assistance Authority.

26. Where it appears to the Minister that urgent action may be necessary to protect an industry, in relation to the importation of any goods, pending receipt and consideration of a report of the Commission in relation to those goods, he may request the Temporary Assistance Authority to undertake an inquiry, either in relation to the importation of those goods generally or in relation to the importation of those goods from a particular country or countries, and to report to the Minister—

(a) whether it is necessary that urgent action be taken to protect that industry in relation to the importation of those goods; and

(b) if such urgent action is necessary—whether, having regard to the public interest and to Australia's obligations under bilateral or multilateral trade agreements, the protection can appropriately be provided by means of a temporary duty or, if it cannot be so provided, whether it can appropriately be provided—

(i) by means of the temporary prohibition or restriction of the importation of those goods; or

(ii) by means of a combination of both a temporary duty and the temporary prohibition or restriction of the importation of those goods.

Inquiries by Temporary Assistance Authority.

27. (1) Upon receipt of a request under section 26, the Temporary Assistance Authority shall forthwith undertake the inquiry.

(2) The Temporary Assistance Authority undertaking an inquiry under this section in relation to any goods shall conduct the inquiry in such manner as it thinks fit.

Reports by Temporary Assistance Authority.

28. (1) A Temporary Assistance Authority undertaking an inquiry under section 27 shall, as soon as practicable but not later than thirty days after the date on which he is nominated to undertake the inquiry, report to the Minister on the matters that are the subject of the inquiry.

(2) Where the Temporary Assistance Authority reports that it is necessary that urgent action be taken to protect an industry in relation to the importation of any goods—

(a) if the Temporary Assistance Authority reports that the protection can appropriately be provided by means of, or by means of

measures that include, a temporary duty—the Temporary Assistance Authority shall also report what should be the rate of that duty; and

- (b) if the Temporary Assistance Authority reports that the protection can appropriately be provided by means of, or by means of measures that include, the temporary prohibition or restriction of the importation of those goods—the Temporary Assistance Authority shall also indicate in the report the extent to which the protection should be so provided.

29. (1) Notwithstanding sub-section 23 (3), where—

Temporary duties.

- (a) a Temporary Assistance Authority has, under section 28, reported that it is necessary that urgent action be taken to protect an industry in relation to the importation of any goods and that the protection can appropriately be provided by means of, or by means of measures that include, a temporary duty; and
- (b) the Minister has referred to the Commission for inquiry and report the matter of whether duties should be imposed on those goods or the matter of whether the rates of duties imposed on those goods should be increased,

the Minister may take action for the purpose of the collection of a duty in respect of those goods (in addition to any existing duty) at a rate not exceeding the rate specified in the report of the Temporary Assistance Authority and not to operate after the expiration of a period of three months from the date upon which the Minister receives the report of the Commission upon the reference.

(2) Where the Minister takes action for the purpose of the collection of a temporary duty, a copy of the relevant report under section 28 shall be laid before the House of Representatives—

- (a) if that House is sitting on the day on which the temporary duty commences to be collected—on or before that day; or
- (b) in any other case—within seven sitting days of that House after that day.

(3) On the day on which a copy of a report is laid before the House of Representatives under sub-section (2) or on the next sitting day of the Senate, a copy of that report shall be laid before the Senate.

(4) Where a temporary duty has commenced to be collected in respect of any goods, the Minister shall, as soon as practicable after receipt by him of the report of the Commission upon the reference to the Commission or to the Tariff Board with respect to those goods that was pending on the date as from which the duty commenced to be collected, notify in the *Gazette* the fact that he has received the report of the Commission upon that reference and the date upon which he received that report.

Import
restrictions.

30. (1) Notwithstanding sub-section 23 (3), where—

- (a) a Temporary Assistance Authority has, under section 28, reported that it is necessary that urgent action be taken to protect an industry in relation to the importation of any goods and that the protection can appropriately be provided by means of, or by means of measures that include, the temporary prohibition or restriction of the importation of those goods; and
- (b) the Minister has referred to the Commission for inquiry and report the matter of whether the importation of those goods should be prohibited or restricted,

the Minister may take action for the purpose of the prohibition or restriction of the importation of those goods.

(2) Where the Minister so takes action for the purpose of the prohibition or restriction of the importation of any goods, a copy of the relevant report under section 28 shall be laid before the House of Representatives—

- (a) if that House is sitting on the day on which the Minister so takes action—on or before that day; or
- (b) in any other case—within seven sitting days of that House after that day.

(3) On the day on which a copy of a report is laid before the House of Representatives under sub-section (2) or on the next sitting day of the Senate, a copy of that report shall be laid before the Senate.

(4) Where the Minister has taken action under this section for the purpose of the prohibition or restriction of the importation of any goods, he shall—

- (a) as soon as practicable after receipt by him of the report of the Commission upon the reference to the Commission or to the Tariff Board with respect to those goods that was pending on the date as from which the prohibition or restriction commenced to be imposed, notify in the *Gazette* the fact that he has received the report of the Commission upon that reference and the date upon which he received that report; and
- (b) unless the Commission, in the report, recommends that the prohibition or restriction of the importation of those goods continue for a period extending beyond the period of three months from the date upon which he received the report—take action before the expiration of that period of three months for the purpose of the removal of the prohibition or restriction.

Application
of Part to
reports by
special
advisory
authority.

31. This Part applies in relation to a report made by a special advisory authority under Part V of the *Tariff Board Act* 1921–1972 (including Part V of that Act as continued in force by sub-section 3 (6) of this Act) as if the report had been made by a Temporary Assistance Authority under this Part.

PART V—CONDUCT OF INQUIRIES

32. Before the Commission commences to hold an inquiry, the Commission shall give reasonable notice in each State and in the Australian Capital Territory and in the Northern Territory, by advertisement published in the *Gazette* and in a newspaper circulating in the State or Territory, as the case may be, of its intention to hold the inquiry, the subject of the inquiry and the time and place at which the inquiry is to be commenced. Notice of inquiries.

33. (1) An inquiry conducted by the Commission shall be held in public and evidence in the inquiry shall, subject to this section, be taken in public on oath or affirmation. Procedure at inquiries.

(2) If a witness objects to giving in public any evidence that the Commission is satisfied is of a confidential nature, the Commission may take that evidence in private if it considers that it is desirable in the public interest to do so.

(3) The Commission may, if it thinks fit, permit a person appearing as a witness before the Commission to give evidence by tendering, and verifying by oath or affirmation, a written statement.

(4) Where the Commission considers that the attendance of a person as a witness before the Commission would cause serious hardship to the person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified in such manner as the Commission allows.

(5) Where evidence is given by a written statement in accordance with sub-section (3) or (4), the Commission shall make available to the public in such manner as the Commission thinks fit the contents of the statement other than any matter—

- (a) that the person who gave the evidence objects to being made public; and
- (b) the evidence of which the Commission is satisfied would have been taken in private if that evidence had been given orally and the witness had objected to giving it in public.

(6) Subject to this section—

- (a) the procedure to be followed at an inquiry is within the discretion of the Commission; and
- (b) the Commission is not bound by the rules of evidence.

34. The Chairman, or a Commissioner who has been nominated to preside at a meeting of the Commission, may, by writing signed by him, summon a person to appear before the Commission at a time and place specified in the summons to give evidence and produce such books and documents (if any) as are referred to in the summons. Power to summon witnesses.

Failure of witness to attend.

35. A person served with a summons to appear as a witness at an inquiry by the Commission shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by the Commissioner presiding at the inquiry.

Penalty: One thousand dollars or imprisonment for three months.

Power to administer oath or affirmation.

36. Any Commissioner may administer an oath or affirmation to a person appearing as a witness before the Commission.

Refusal to be sworn or to answer questions.

37. A person appearing as a witness at an inquiry by the Commission shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation;
- (b) refuse or fail to answer a question that he is required to answer by the Commissioner presiding at the inquiry; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under this Act served on him.

Penalty: One thousand dollars or imprisonment for three months.

Protection of Commissioners and witnesses.

38. (1) A Commissioner has, in the performance of his duties as a Commissioner, the same protection and immunity as a Justice of the High Court.

(2) Subject to this Act, a person appearing before the Commission as a witness at an inquiry has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

Contempt of Commission.

39. A person shall not—

- (a) insult or disturb a Commissioner in the exercise of his powers or the performance of his functions or duties as a Commissioner;
- (b) interrupt an inquiry by the Commission;
- (c) use insulting language towards a Commissioner;
- (d) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Commission is holding an inquiry; or
- (e) do any other act or thing that would, if the Commission were a court of record, constitute a contempt of that court.

Penalty: One thousand dollars or imprisonment for three months.

Powers of Commission in relation to documents produced.

40. (1) A Commissioner or a member of the staff assisting the Commission may inspect any books or documents furnished to the Commission for the purposes of the performance of its functions under this Act or produced at an inquiry and may make copies of, or take extracts from, those books or documents.

(2) Books or documents so furnished may be retained by the Commission for such reasonable period as the Commission thinks fit.

41. A witness summoned under this Act to appear at an inquiry by the Commission is entitled to be paid by Australia such allowances for his travelling and other expenses as are prescribed. Allowances to witnesses.

42. (1) An employer shall not—

- (a) dismiss an employee from his employment, or prejudice an employee in his employment, by reason that the employee has appeared as a witness, or has given any evidence, at an inquiry by the Commission; or
- (b) dismiss or threaten to dismiss an employee from his employment, or prejudice or threaten to prejudice an employee in his employment, by reason that the employee proposes to appear as a witness or to give evidence at an inquiry by the Commission.

Witness prejudiced in his employment.

Penalty: Five hundred dollars or imprisonment for six months.

(2) In any proceedings for an offence against this section—

- (a) if it is established that the employee was dismissed from, or prejudiced in, his employment and that, before he was so dismissed or prejudiced, he appeared as a witness, or gave any evidence, at an inquiry by the Commission—the burden lies on the defendant of proving that the employee was not dismissed or prejudiced by reason that he so appeared as a witness or gave evidence; or
- (b) if it is established that the employee was dismissed, or threatened with dismissal, from his employment, or was prejudiced, or threatened with prejudice, in his employment and that before he was so dismissed, threatened with dismissal, prejudiced or threatened with prejudice, he proposed to appear as a witness, or to give evidence, at an inquiry by the Commission—the burden lies on the defendant of proving that the employee was not so dismissed, threatened with dismissal, prejudiced or threatened with prejudice by reason that he proposed so to appear as a witness or to give evidence.

PART VI—MISCELLANEOUS

43. (1) Subject to sub-section (2), the staff required to assist the Commission in the performance of its functions shall be persons appointed or employed under the *Public Service Act 1922–1973*. Staff.

(2) Nothing in sub-section (1) prevents the engaging by the Chairman, with the consent of the Minister, of persons, not being persons referred to in that sub-section, to provide services for the Commission.

(3) The Chairman has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922–1973* so far as those powers relate to the branch of the Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Public Service.

(4) For the purposes of sub-sections 25 (5) and (6) of the *Public Service Act 1922-1973*, the Chairman shall be deemed to be a Permanent Head.

Rights of public servant appointed as Commissioner or Associate Commissioner.

44. If a person appointed as a Commissioner or Associate Commissioner, was, immediately before his appointment, an officer of the Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1969* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as a Commissioner or Associate Commissioner shall be taken into account as if it were service in the Public Service; and
- (c) the *Officers' Rights Declaration Act 1928-1969* applies as if this Act and this section had been specified in the Schedule to that Act.

Annual report.

45. (1) The Commission shall, not later than ninety days after 1 July in each year, furnish to the Minister a report (in this section referred to as an "annual report") on the operations of the Commission (including the operations of Commissioners or Associate Commissioners under Part IV) during that year.

(2) In an annual report, the Commission shall, so far as practicable, also report on—

- (a) the assistance provided to industries by the Australian Government and the effect of that assistance on the development of those industries;
- (b) the economic performance of those industries and the principal factors affecting that performance; and
- (c) the general effect on the Australian economy of the provision of that assistance.

(3) An annual report shall not include recommendations for changes in the nature or extent of the assistance provided by the Australian Government to particular industries but may include recommendations for changes in the nature or extent of the assistance provided by the Australian Government to industries generally.

(4) The Minister shall cause a copy of each annual report to be laid before each House of the Parliament within fifteen sitting days of that House after the date of receipt of the report by the Minister.

(5) The copy of an annual report so laid before a House of the Parliament shall be accompanied by a statement by the Minister setting out what action, if any, has been taken during the year to which the annual report relates in respect of each report made to the Minister by the Commission, or by a Commissioner or Associate Commissioner under Part IV, during that year or a preceding year.

46. The Governor-General may make regulations, not inconsistent Regulations. with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE

Section 3

ACTS REPEALED*Tariff Board Act 1921**Tariff Board Act 1923**Tariff Board Act 1924**Tariff Board Act 1929**Tariff Board Act 1933**Tariff Board Act 1950**Tariff Board Act 1952**Tariff Board Act 1953**Tariff Board Act 1958**Tariff Board Act 1960**Tariff Board Act 1962**Tariff Board Act (No. 2) 1962**Tariff Board Act 1971**Tariff Board Act 1972.*