

# **AUSTRALIAN DEVELOPMENT ASSISTANCE AGENCY ACT 1974**

**No. 137 of 1974**

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# AUSTRALIAN DEVELOPMENT ASSISTANCE AGENCY ACT 1974

**No. 137 of 1974**

An Act relating to the Provision by Australia of Aid for Developing Countries.

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

## PART I—PRELIMINARY

- Short title.       **1.** This Act may be cited as the *Australian Development Assistance Agency Act 1974*.<sup>1</sup>
- Commence-  
ment.           **2.** This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup>
- Definitions.     **3.** In this Act, unless the contrary intention appears—
- “Agency” means the Australian Development Assistance Agency established by this Act;
  - “aid”, in relation to developing countries, means aid for the social and economic development of those countries, and includes aid for the relief of people in those countries who have been affected by disasters;
  - “Board” means the Development Assistance Advisory Board established by this Act;
  - “Chairman” means the Chairman of the Board;
  - “country” includes a province or territory, including Papua New Guinea;
  - “Deputy Chairman” means the Deputy Chairman of the Board;
  - “Director” means the Director of the Agency;
  - “Fund” means the Development Assistance Fund established by this Act;
  - “member” means a member of the Board;
  - “multilateral aid” means aid provided by two or more countries in association with each other or aid provided by an international organization, including a financial institution.

**PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF  
AUSTRALIAN DEVELOPMENT ASSISTANCE AGENCY**

**4. (1)** There is established by this Act an Agency by the name of the Australian Development Assistance Agency. Australian Development Assistance Agency.

(2) The Agency—

(a) is a body corporate;

(b) shall have a seal;

(c) may acquire, hold and dispose of real and personal property; and

(d) may sue or be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Agency affixed to a document and shall presume that it was duly affixed.

**5. (1)** The functions of the Agency are—

(a) to administer the provision by Australia of aid for developing countries, including the participation by Australia in the provision of multilateral aid for developing countries;

(b) to administer the Fund;

(c) to advise the Minister on matters relating to aid for developing countries; and

(d) such other functions in connexion with aid for developing countries as the Minister approves.

(2) The Agency has power to do all things that are necessary or convenient to be done for or in connexion with the performance of its functions.

**PART III—THE DIRECTOR OF THE AUSTRALIAN  
DEVELOPMENT ASSISTANCE AGENCY**

**6. (1)** For the purposes of this Act, there shall be a Director of the Australian Development Assistance Agency. Director.

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

(3) The Director is the executive officer of the Agency and shall, subject to and in accordance with the directions of the Minister, conduct the affairs of the Agency.

**7. (1)** The Director shall be appointed for such period, not exceeding 5 years, as the Governor-General specifies in the instrument of appointment, but is eligible for re-appointment. Period of appointment of Director.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Director and a person shall not be appointed or re-appointed as the Director for a period that extends beyond the date on which he will attain the age of 65 years.

Remuneration and allowances of Director.

**8.** (1) The Director shall be paid such remuneration as is determined by the Remuneration Tribunal but, until that remuneration is so determined, he shall be paid such remuneration as is prescribed.

(2) Subject to the *Remuneration Tribunals Act 1973-1974*, the Director shall be paid such allowances as are prescribed.

Leave of absence of Director.

**9.** The Minister may grant leave of absence to the Director on such terms and conditions as to remuneration and otherwise as the Minister determines.

Termination of office of Director.

**10.** (1) The Governor-General may terminate the appointment of the Director by reason of misbehaviour or physical or mental incapacity.

(2) If the Director—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister;
- (b) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months;
- (c) becomes bankrupt or 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; or
- (d) in any way, otherwise than as a member, and in common with the other members, of an incorporated company consisting of more than twenty-five persons—
  - (i) is or becomes directly or indirectly interested in a contract made or proposed to be made by the Agency; or
  - (ii) participates or claims to participate in the profits of any such contract or in any benefit arising from any such contract,

the Governor-General shall terminate the appointment of the Director.

Resignation of Director.

**11.** The Director may resign his office by writing under his hand addressed to the Minister.

Acting appointment as Director.

**12.** (1) Where the Director is, or is expected to be, absent from duty or from Australia or there is, or is expected to be, a vacancy in the office of Director (whether or not an appointment has previously been made to that office), the Minister may appoint a person to be acting Director during the absence or until the filling of the vacancy.

(2) An acting Director appointed in the event of a vacancy shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(3) An acting Director has all the functions, powers and duties of the Director.

(4) The Minister may, at any time, terminate an appointment under this section.

(5) Subject to this section, a person appointed under this section holds office on such terms and conditions as the Minister determines.

(6) The validity of an act done by a person appointed under this section shall not be questioned in any proceedings on a ground arising from the fact that the occasion for his appointment had not arisen or that the appointment (not being an appointment by reason of a vacancy in the office of Director) had ceased to have effect.

**13.** For the purposes of the *Superannuation Act 1922-1974*—

- (a) the Director shall be taken to be a person who is required, by the terms of his appointment, to give the whole of his time to the duties of his office; and
- (b) the termination under sub-section 10 (1) of this Act of his appointment by reason of his physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

Super-  
annuation.

**14.** If a person appointed as the Director was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1973* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purposes of determining those rights, his service as Director shall be taken into account as if it were service in the Australian Public Service; and
- (c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.

Rights of  
public  
servant  
appointed as  
Director.

#### PART IV—THE DEVELOPMENT ASSISTANCE ADVISORY BOARD

**15.** (1) There is established by this Act a Board by the name of the Development Assistance Advisory Board.

Development  
Assistance  
Advisory  
Board.

(2) The Board shall consist of not fewer than four nor more than twelve part-time members.

(3) The performance of the duties and functions of the Board is not affected by reason only of the number of members falling below four for a period of not more than 3 months.

(4) The members shall be appointed by the Minister.

**16.** The functions of the Board are to furnish advice to the Minister and the Agency in respect of matters relating to aid for developing countries.

Functions of  
Board.

- Chairman and Deputy Chairman of Board.** 17. The Minister shall appoint one member to be Chairman of the Board and another member to be Deputy Chairman of the Board.
- Period of appointment of members.** 18. A member shall be appointed for such period, not exceeding 3 years, as the Minister specifies in the instrument of appointment, but is eligible for re-appointment.
- Remuneration and allowances of members.** 19. (1) Members shall be paid such remuneration as is determined by the Remuneration Tribunal but, until that remuneration is so determined, they shall be paid such remuneration as is prescribed.
- (2) Subject to the *Remuneration Tribunals Act 1973-1974*, the members shall be paid such allowances as are prescribed.
- (3) This section does not apply to a person appointed or employed under the *Public Service Act 1922-1974* or an officer or employee of an authority of Australia.
- Termination of office of member.** 20. (1) The Minister may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.
- (2) If a member—
- (a) is absent, except on leave granted by the Board, from three consecutive meetings of the Board;
- (b) becomes bankrupt or 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; or
- (c) fails to comply with sub-section 21 (1),
- the Minister shall terminate the appointment of the member.
- Disclosure of interest by member.** 21. (1) A member who is directly or indirectly interested in a contract made or proposed to be made by the Agency shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.
- (2) A disclosure under sub-section (1) shall be recorded in the minutes of the Board, and, unless the Minister otherwise directs, the member—
- (a) shall not take part after the disclosure in any deliberation or decision of the Board relating to the contract; and
- (b) shall be disregarded for the purpose of constituting a quorum for any such deliberation or decision.
- Resignation of member.** 22. A member may resign his office by writing under his hand addressed to the Minister.

- 23.** (1) The Board shall hold such meetings as are necessary for the performance of its functions. Meetings of the Board.
- (2) The Chairman may at any time convene a meeting of the Board.
- (3) The Chairman shall, on receipt of a request in writing signed by two other members of the Board, convene a meeting of the Board.
- (4) At a meeting of the Board a majority of the members of the Board constitute a quorum.
- (5) The Chairman shall preside at all meetings of the Board at which he is present.
- (6) If, at a meeting of the Board, the Chairman is not present but the Deputy Chairman is present, the Deputy Chairman shall preside at the meeting.
- (7) If neither the Chairman nor the Deputy Chairman is present at a meeting of the Board, the members present shall elect one of their number to preside at the meeting.
- (8) Questions arising at a meeting of the Board shall be determined by a majority of the votes of the members present and voting.
- (9) The member presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

#### PART V—STAFF

- 24.** (1) The staff of the Agency shall be persons appointed or employed under the *Public Service Act* 1922-1974. Staff of Agency.
- (2) For the purposes of this section, the Director has all the powers of, or exercisable by, a Permanent Head under that Act so far as those powers relate to the branch of the Australian Public Service comprising the staff of the Agency as if that branch were a separate Department of the Australian Public Service.
- (3) For the purposes of sub-sections 25 (5) and (6) of that Act, the Director shall be deemed to be a Permanent Head.

#### PART VI—DEVELOPMENT ASSISTANCE FUND

- 25.** (1) There is established by this Act a Fund by the name of the Development Assistance Fund. Development Assistance Fund.
- (2) The Fund is a Trust Account for the purposes of section 62A of the *Audit Act* 1901-1973.



**Moneys paid into Fund.**      **26.** Moneys other than moneys appropriated by the Parliament for the purposes of the Fund shall not be accepted for payment to the credit of the Fund except with the approval of the Minister.

**Application of Fund.**      **27.** (1) Moneys standing to the credit of the Fund may, subject to this Act, be expended on projects of aid for developing countries, but not otherwise.

(2) Where an Act by which moneys are appropriated for the purposes of the Fund specifies the purposes for which the moneys are provided by reference to a particular developing country or a particular project of aid, a separate account shall be kept in the Fund in respect of those moneys and those moneys shall be expended only for the purposes so specified.

#### PART VII—MISCELLANEOUS

**Power to enter contracts.**      **28.** The Agency shall not enter into any contract or acquire or dispose of any property except as approved by the Minister.

**Liability to taxation.**      **29.** (1) Subject to sub-section (2), the Agency is not subject to taxation under any law of Australia or of a State or Territory.

(2) The regulations may provide that sub-section (1) does not apply in relation to taxation under a specified law.

**Annual report.**      **30.** (1) The Agency shall, as soon as practicable after each 30 June, prepare and furnish to the Minister, for presentation to the Parliament, a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Treasurer approves.

(2) Before furnishing the financial statements to the Minister, the Agency shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt and expenditure of moneys, and the acquisition and disposal of assets, by the Agency during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

31. The Minister may, on behalf of the Agency, engage, or make other arrangements with, persons, organizations or companies to carry out research and perform other work for the Agency, whether in Australia or overseas, on such terms and conditions (in respect of matters not provided for by this Act) as the Minister determines. Arrange-  
ments by  
Minister.

32. (1) The Minister may, by writing under his hand, delegate to a person, either generally or otherwise, his powers and functions under section 31. Delegation.

(2) The Director may, by writing under his hand, delegate to a person either generally or otherwise, all or any of his powers and functions under this Act except this power of delegation.

(3) A power or function delegated under sub-section (1) or (2) may be exercised or performed by the delegate in accordance with the delegation and, when so exercised or performed, shall, for the purposes of this Act, be deemed to have been exercised or performed by the person who gave the delegation.

(4) A delegate of the Minister is, in the exercise of powers, and the performance of functions, delegated under sub-section (1), subject to the directions of the Minister.

(5) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the person who gave the delegation.

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

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#### NOTE

1. Act No. 137, 1974; assented to 9 December 1974.