

INTER-STATE COMMISSION ACT 1975

No. 109 of 1975

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INTER-STATE COMMISSION ACT 1975

No. 109 of 1975

An Act relating to the Inter-State Commission.

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 *Inter-State Commission Act 1975*.¹
- Commence-
ment. 2. This Act shall come into operation on a date to be fixed by Proclamation.
- Interpret-
ation. 3. In this Act, unless the contrary intention appears—
“Commission” means the Inter-State Commission;
“documents” includes any books, accounts or writings and any record of information, however compiled, recorded or stored, whether in writing, on microfilm or microfiche, by electronic process or otherwise;
“goods” includes—
(a) ships, aircraft and vehicles;
(b) animals (including fish);
(c) minerals (including petroleum) and slurry; and
(d) gas;
“inter-State transport” means transport of goods or persons, being transport constituting part of trade or commerce among the States or transport of goods that are the subject of such trade or commerce;
“meeting”, in relation to the Commission, includes a sitting of the Commission for the purpose of taking evidence or hearing submissions at an investigation or for the purposes of an arbitration;
“member” means a member of the Commission and includes the President;
“person” includes Australia, a State and an authority of Australia or of a State;
“President” means the President of the Commission;
“terms and conditions”, in relation to the provision of services, includes charges for the provision of those services;
“transport” includes the movement of goods through a pipe-line.

4. This Act binds Australia and each State but nothing in this Act renders Australia or a State liable to be prosecuted for an offence.

Act to bind Australian and State Governments.

5. This Act has effect notwithstanding anything in any Act passed before the commencement of this Act but nothing in this Act affects the operation of any other Act so far as that other Act is capable of operating concurrently with this Act.

Effect on other Acts.

6. Nothing in this Act or in the regulations shall affect, or authorize action in connexion with, any obligations imposed by any of the agreements referred to in section 3 of the *Airlines Agreements Act 1952-1973* on the parties to those agreements.

Airlines Agreements Act not affected.

PART II—CONSTITUTION OF THE INTER-STATE COMMISSION

7. (1) The Commission shall consist of a President and 2 other members.

Membership of Commission.

(2) The Commission may exercise its powers notwithstanding any vacancy or vacancies in the membership of the Commission.

8. (1) One of the members shall be a person who is or has been a barrister, solicitor, barrister and solicitor, or legal practitioner, of the High Court or of the Supreme Court of a State or Territory of not less than 5 years' standing.

Qualifications for appointment.

(2) The other 2 members shall be persons who have had experience at a high level in industry, commerce, economics, law, public administration or some other field that has substantial relevance to the duties of a member.

PART III—POWERS OF COMMISSION

9. (1) The Minister may at any time, by notice in writing given by him to the Commission, direct the Commission to investigate any matter or matters specified in the notice, being a matter or matters relating to inter-State transport.

Powers of investigation.

(2) Without limiting the generality of sub-section (1), the Minister may at any time, by notice in writing given by him to the Commission, direct the Commission to investigate all or any of the following matters:—

(a) whether the terms and conditions on which a service by way of or in relation to inter-State transport is provided are reasonable

and just and, if not, what terms and conditions would be reasonable and just in relation to the provision of that service;

- (b) whether any preference or advantage in connexion with the provision of any service by way of or in relation to inter-State transport given to any particular person, State, locality or class or kind of transport is undue and unreasonable;
- (c) whether any discrimination or disadvantage in connexion with the provision of any service by way of or in relation to inter-State transport to which any particular person, State, locality or class or kind of transport is subjected is undue and unreasonable;
- (d) whether the doing of an act or thing by a State, or an authority of a State, as to any railway, in respect of or so as to affect trade or commerce among the States, constitutes a preference or discrimination that is undue and unreasonable, or unjust to any State.

(3) In deciding whether the doing of any act or thing constitutes for the purposes of paragraph (2) (d) a preference or discrimination that is undue and unreasonable, or unjust to any State, the Commission shall have due regard to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways.

(4) Where the Commission has commenced to investigate a matter or matters, the Minister may, by notice in writing given by him to the Commission, direct the Commission to extend the investigation into any other matter or matters specified in the notice, being a matter or matters referred to in sub-section (1) or (2).

(5) Where the Commission has been directed to investigate more than one matter, the Minister may give directions to the Commission as to the order in which it is to investigate those matters.

(6) The Commission shall comply with any direction given to the Commission by the Minister in accordance with this section.

Reports and
adjudica-
tions by
Commission.

10. (1) Where the Commission has held an investigation, the Commission shall furnish to the Minister a report setting out any findings made by the Commission as a result of the investigation (including, where the Commission has investigated a matter referred to in paragraph 9 (2) (a), (b), (c) or (d), any adjudication by the Commission in relation to that matter) and any recommendations that the Commission thinks fit to make in consequence of those findings.

(2) The Commission may, if it thinks fit, recommend a system of freight cost equalization or subsidy.

(3) The Minister shall cause a report furnished to him by the Commission to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Minister.

PART IV—INVESTIGATIONS BY COMMISSION

11. (1) Before the Commission commences to hold an investigation into a matter or matters, the Commission shall—

Notice of investigations.

- (a) give 14 days' notice in writing to every person who the Commission considers will be directly and specially affected by the investigation; and
- (b) give reasonable public notice in each State, 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,

stating that it proposes to hold an investigation into that matter or those matters and specifying the time and place at which the investigation is to be commenced.

(2) Where the Commission is holding an investigation into a matter or matters, sub-section (1) applies in relation to the commencement of any extension of that investigation into any other matter or matters in like manner as it applies in relation to the commencement of the original investigation.

12. (1) Evidence in an investigation held by the Commission shall, subject to this section, be taken in public on oath or affirmation.

Procedure at investigations.

(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 and to the regulations—

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

Power of
Commission
to summon
witnesses,
&c.

13. (1) For the purposes of an investigation by the Commission, a member may—

- (a) summon a person to appear before the Commission at the investigation to give evidence and to produce such documents (if any) as are referred to in the summons;
- (b) require a person appearing before the Commission at the investigation to give evidence either to take an oath or make an affirmation; and
- (c) administer an oath or affirmation to a person so appearing before the Commission.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers he will give to questions asked him will be true.

Representa-
tion.

14. At the taking of evidence by the Commission, the Commission may permit any person to appear who, in the opinion of the Commission, has a sufficient interest in the subject-matter of the proceeding before the Commission, and a person appearing may be represented by a barrister or a solicitor of the High Court or of the Supreme Court of a State or Territory or by some other person approved by the Commission.

Failure of
witness to
attend.

15. A person served, as prescribed, with a summons to appear as a witness at an investigation 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 member presiding at the investigation.

Penalty: \$1,000 or imprisonment for 3 months.

Refusal to be
sworn or to
answer
questions.

16. (1) A person appearing as a witness at an investigation by the Commission shall not, without reasonable excuse—

- (a) when required in pursuance of section 13 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he is required to answer by the member presiding at the investigation; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under this Act served on him as prescribed.

Penalty: \$1,000 or imprisonment for 3 months.

(2) A person is not excused from answering a question or producing a document when required to do so under this Act on the ground that the

answer to the question, or the document, might tend to incriminate him or make him liable to a penalty, but his answer to any such question, or any such document, is not admissible in evidence against him in proceedings other than proceedings for an offence against this section.

17. A person shall not—

Contempt of
Commission.

- (a) insult a member in or in relation to the exercise of his powers or functions as a member;
- (b) interrupt the proceedings of the Commission;
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Commission is holding an investigation; or
- (d) do any other act or thing that would, if the Commission were a court of record, constitute a contempt of that court.

Penalty: \$1,000 or imprisonment for 3 months.

18. A witness summoned under this Act to appear at an investigation by the Commission is entitled, in respect of his appearance as a witness, to be paid by Australia such fees, and such allowances for expenses, as are fixed by or in accordance with the regulations.

Fees and
allowances
to witnesses.

PART V—ADMINISTRATIVE PROVISIONS RELATING TO THE COMMISSION

19. (1) Subject to this section—

Remuner-
ation and
allowances.

- (a) the President shall be paid salary at the rate of \$35,000 per annum and an annual allowance at the rate of \$1,750 per annum; and
- (b) a member other than the President shall be paid salary at the rate of \$27,500 per annum and an annual allowance at the rate of \$500 per annum.

(2) Where a member is absent overnight from his ordinary place of residence in the course of the performance of his duties, he shall be paid travelling allowance at such rate as is prescribed.

(3) The *Remuneration Tribunals Act 1973–1974* applies in relation to the remuneration and allowances payable to a member under this section in like manner as that Act applies in relation to the remuneration and allowances payable to a Judge of a court created by the Parliament.

20. A member may resign his office by writing signed by him and delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General.

Resig-
nation.

Acting
President.

21. (1) Where the President is, or is expected to be, absent from duty or from Australia or there is a vacancy in the office of President, the Governor-General may appoint another member to act as President during the period for which the President is absent or until the filling of the vacancy, as the case may be.

(2) The validity of anything done by a person acting as President shall not be called in question on the ground that the occasion for his acting had not arisen or had passed.

Rights of
public
servant
appointed as
member.

22. If a member was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1975* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as a member shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act 1928-1975* applies as if this Act and this section had been specified in the Schedule to that Act.

Application
of Super-
annuation
Act.

23. (1) For the purposes of sub-sections 4 (3A) and (4) of the *Superannuation Act 1922-1974*, a member 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.

(2) If a member who is contributing to the Superannuation Fund under the *Superannuation Act 1922-1974* is removed from office on the ground of incapacity, the removal from office shall be deemed for the purposes of that Act to be retirement on the ground of invalidity.

Application
of Judges'
Pensions
Act.

24. (1) Subject to this section, the *Judges' Pensions Act 1968-1974* has effect as if the President had the status of a Judge of the Australian Industrial Court.

(2) The *Judges' Pensions Act 1968-1974* does not apply to the President if section 22 applies to him.

(3) If the President is a person to whom section 22 would, but for this sub-section, apply and he elects, within 3 months after his appointment as President, by notice in writing to the Minister that that section shall not apply to him, that section does not apply, and shall be deemed not to have applied, to him.

(4) Where the President makes an election in accordance with sub-section (3), the *Superannuation Act 1922-1974* applies in relation to him as if he had resigned.

(5) The amount of any pension that, but for this sub-section, would be payable to a person under the *Judges' Pensions Act 1968-1974* in respect of any period by virtue of that person or another person having

been a member shall be reduced by the amount of any other pension or retiring allowance payable to the first-mentioned person in respect of that period out of moneys provided in whole or in part by—

- (a) Australia, a State or the Administration of a Territory;
- (b) a body corporate established for a public purpose by a law of Australia, of a State or of a Territory; or
- (c) an incorporated company all the stock or shares in the capital of which is or are beneficially owned by Australia or a State.

25. (1) A member shall not engage in paid employment outside the duties of his office. Outside employment.

(2) Nothing in this Act prevents a member or members, with the consent of the Minister, from arbitrating, without payment, on any matter on which the member is, or the members are, requested by a person to arbitrate.

26. (1) Subject to this section, the President shall convene such meetings of the Commission as he thinks necessary for the efficient performance of the functions of the Commission. Meetings.

(2) The President shall convene a meeting of the Commission upon being requested in writing to do so by the other 2 members.

(3) Meetings of the Commission shall be held at such places as the President determines.

(4) The President shall preside at all meetings of the Commission at which he is present.

(5) In the absence of the President from a meeting of the Commission, the members present shall appoint one of their number to preside at the meeting.

(6) At a meeting of the Commission—

- (a) 2 members form a quorum;
- (b) all questions shall be decided by a majority of votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) In this section, a reference to the President shall, if there is a person acting as President, be read as a reference to the person so acting.

PART VI—MISCELLANEOUS

Staff of
Commission.

27. (1) The staff necessary to assist the Commission shall be persons appointed or employed under the *Public Service Act* 1922-1975.

(2) The President has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act* 1922-1975 so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in sub-section (1) 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 the *Public Service Act* 1922-1975, the President shall be deemed to be a Permanent Head.

(4) Notwithstanding sub-section (1), the President may, on terms and conditions approved by the Public Service Board, engage persons, not being persons appointed or employed as mentioned in that sub-section, to provide services or perform functions for, or to furnish advice to, the Commission.

(5) In this section, a reference to the President shall, if there is a person acting as President, be read as a reference to the person so acting.

Powers of
Commission
in relation to
documents
produced.

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

(2) Any documents furnished to the Commission as mentioned in sub-section (1) may be retained by the Commission for such reasonable period as the Commission thinks fit.

Conflict of
member's
interests.

29. A member shall not exercise a power or perform a function under this Act in relation to a matter if he has any interest, pecuniary or otherwise, that could conflict with the proper exercise of the power or the proper performance of the function in relation to that matter.

Protection of
members,
representatives
and
witnesses.

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

(2) A person appearing before the Commission, whether appearing on his own behalf or on behalf of another person, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Act, a person appearing before the Commission as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

31. (1) The Commission may authorize a member of the Commission, a member of the staff assisting the Commission, or a person engaged under sub-section 27 (4), to take evidence on behalf of the Commission for the purposes of an investigation being held by the Commission and to furnish a report to the Commission on the evidence so taken.

Power of Commission to authorize person to take evidence.

(2) The provisions of this Act relating to the taking of evidence by the Commission, and to the powers, duties, protection and immunity of members of the Commission, apply in relation to a person performing functions under sub-section (1) as if the evidence taken by him were taken by the Commission and, if he is not a member of the Commission, as if he were such a member.

32. The Commission shall, within 60 days after each year ending on 30 June, furnish to the Minister, for presentation to the Parliament, a report with respect to the operations of the Commission in that year.

Annual report by Commission.

33. The Governor-General may make regulations, not inconsistent 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.

Regulations.

NOTE

1. Act No. 109, 1975; assented to 27 October 1975.