

# PRICES JUSTIFICATION AMENDMENT ACT 1976

## No. 182 of 1976

An Act to amend the *Prices Justification Act 1973* and for related purposes.

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

1. (1) This Act may be cited as the *Prices Justification Amendment Act 1976*.<sup>1</sup> Short title,  
&c.

(2) The *Prices Justification Act 1973*<sup>2</sup> is in this Act referred to as the Principal Act.

2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup> Commence-  
ment.

3. Section 3 of the Principal Act is amended—

(a) by inserting in sub-section (1), before the definition of “Chairman”, the following definition:—

“ ‘associate member’ means an associate member of the Tribunal; ”; and

(b) by omitting from the definition of “Deputy Chairman” in sub-section (1) the words “a Deputy Chairman” and substituting the words “the Deputy Chairman”.

Interpret-  
ation.

4. Section 4 of the Principal Act is repealed and the following section substituted:—

“4. (1) A reference in this Act to the holding company of a body corporate shall be read as a reference to a body corporate of which that other body corporate is a subsidiary. Holding  
companies,  
subsidiaries  
and related  
companies.

“(2) For the purposes of this Act, a body corporate shall, subject to sub-section (4), be deemed to be a subsidiary of another body corporate if—

(a) that other body corporate—

(i) controls the composition of the board of directors of the first-mentioned body corporate;

(ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first-mentioned body corporate; or

- (iii) holds more than one-half of the allotted share capital of the first-mentioned body corporate (excluding any part of that allotted share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first-mentioned body corporate is a subsidiary of any body corporate that is that other body corporate's subsidiary (including any body corporate that is that other body corporate's subsidiary by another application or other applications of this paragraph).

“(3) For the purposes of sub-section (2), the composition of a body corporate's board of directors shall be deemed to be controlled by another body corporate if that other body corporate, by the exercise of some power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other body corporate shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that other body corporate of such a power; or
- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other body corporate.

“(4) In determining whether a body corporate is a subsidiary of another body corporate—

- (a) any shares held or power exercisable by that other body corporate in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
  - (i) by any person as a nominee for that other body corporate (except where that other body corporate is concerned only in a fiduciary capacity); or
  - (ii) by, or by a nominee for, a subsidiary of that other body corporate, not being a subsidiary that is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other body corporate;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned body corporate, or of a trust deed for securing any allotment of such debentures, shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, that other body corporate or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other body corporate if the ordinary business of that other body corporate or its subsidiary, as the case may be, includes the lending of money and the shares are

held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

“(5) Where the body corporate—

- (a) is the holding company of another body corporate;
- (b) is a subsidiary of another body corporate; or
- (c) is a subsidiary of the holding company of another body corporate,

that first-mentioned body corporate and that other body corporate shall, for the purposes of this Act, be deemed to be related to each other.

“(6) In proceedings under this Act, whether in a court or before the Tribunal, it shall be presumed, unless the contrary is established, that bodies corporate are not, or were not at a particular time, related to each other.

“(7) In this section, ‘debenture’ includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a body corporate, whether constituting a charge on property of the body corporate or not.”

**5. Section 5 of the Principal Act is amended—**

- (a) by inserting in sub-section (1), after the word “Act,”, the words “subject to sub-section (1A),”;
- (b) by omitting from sub-section (1) the figures “20,000,000” and substituting the figures “30,000,000”;
- (c) by inserting after sub-section (1) the following sub-section:—

“(1A) A company that is a subsidiary of another company is not a prescribed company for the purposes of this Act if the sum of the amounts received by the first-mentioned company during the period of 12 months that ended on the immediately preceding 30 June as payments for the supply of goods, or the supply of services, or both, did not exceed \$5,000,000.”; and

- (d) by inserting in sub-section (2), after the words “in sub-section (1)”, the words “or sub-section (1A)”.

Prescribed  
companies.

**6. Section 6 of the Principal Act is amended—**

- (a) by omitting from sub-section (3) the words “A member” and substituting the words “Subject to sub-section (4), a member”; and
- (b) by omitting sub-section (4) and substituting the following sub-section:—

“(4) An appointment or re-appointment of a member as a part-time member shall not be made after the commencement of the *Prices Justification Amendment Act 1976*.”

Constitution  
of Tribunal.

7. After section 7 of the Principal Act the following section is inserted:—

Associate members.

“7A. (1) The Minister, after consultation with the Chairman, may appoint persons to be associate members of the Tribunal.

“(2) An associate member shall be appointed either—

- (a) for such period, not exceeding 5 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 Tribunal 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 member holds office on such terms and conditions as the Minister determines.

“(4) The Chairman may, by writing signed by him, direct that, for the purposes of the exercise of the powers of the Tribunal in connexion with an inquiry and report in relation to a specified matter, not being an exercise of those powers by a Division of the Tribunal, a specified associate member or specified associate members shall be deemed to be a member or members of the Tribunal and, in that case, unless the contrary intention appears, a reference in this Act to a member of the Tribunal shall, for the purposes only of the exercise of the powers of the Tribunal in connexion with that inquiry and report, be construed as including a reference to that associate member or each of those associate members, as the case may be.

“(5) Associate members shall be deemed to be members of the Tribunal for the purposes of section 22.”

8. Section 8 of the Principal Act is repealed and the following sections are substituted:—

Remuneration and allowances of members.

“8. (1) A member, other than a Judge, shall be paid such remuneration as is determined by the Remuneration Tribunal.

“(2) A member, other than a Judge, shall be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

“(4) In this section, ‘member’ includes an associate member.

“8A. (1) If the Chairman is a Judge, but is not the Chief Judge of the Australian Industrial Court or the President of the Australian Conciliation and Arbitration Commission, he shall be paid:—

Remuneration and allowances of Chairman, being a Judge.

- (a) additional salary at a rate per annum equal to the difference between the rate per annum of the salary payable to the Chief Judge of the Australian Industrial Court and the rate per annum of the salary payable to a Judge of that Court; and
- (b) an additional annual allowance at a rate per annum equal to the difference between the rate per annum of the annual allowance payable to the Chief Judge of the Australian Industrial Court and the rate per annum of the annual allowance payable to a Judge of that Court.

“(2) If the Chairman is a Judge, but is not the Chief Judge of the Australian Industrial Court or the President of the Australian Conciliation and Arbitration Commission, and the Chairman dies or retires as a Judge, the *Judges’ Pensions Act 1968* applies to or in relation to him as if he had been Chief Judge of the Australian Industrial Court immediately before his death or retirement.”

9. Section 10 of the Principal Act is amended by adding at the end thereof the following sub-section:—

Resignation.

“(2) An associate member may resign his office by writing under his hand delivered to the Minister.”

10. Section 11 of the Principal Act is amended—

Termination of appointment.

- (a) by omitting sub-section (3) and substituting the following sub-section:—

“(3) This section applies in relation to associate members in like manner as it applies in relation to members other than full-time members.”; and

- (b) by omitting from sub-section (4) the words “Sub-sections (1), (2) and (3)” and substituting the words “Sub-sections (1) and (2)”.

11. Section 12 of the Principal Act is amended by inserting after the word “member” the words “or associate member”.

Member or associate member not to act when interested.

12. Section 13 of the Principal Act is repealed and the following section substituted:—

“13. (1) The Governor-General may appoint a person who is, or is to be, a member, other than the Chairman, to be the Deputy Chairman of the Tribunal.

Deputy Chairman.

“(2) A person appointed under this section holds office as Deputy Chairman until the expiration of his period of appointment as a member or until he ceases to be a member, whichever first occurs.

“(3) Where a member appointed as Deputy Chairman is, upon ceasing to be Deputy Chairman by virtue of the expiration of the period of his appointment as a member, re-appointed as a member, he is eligible for re-appointment as Deputy Chairman.

“(4) The Deputy Chairman may resign his office of Deputy Chairman by writing signed by him and delivered to the Governor-General.”.

**Acting  
Chairman.**

**13.** Section 14 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:—

“(2) Where the Chairman is absent from duty—

- (a) the Deputy Chairman shall act as Chairman during the absence; or
- (b) if there is no Deputy Chairman or the Deputy Chairman is not available to act as Chairman, the Minister may appoint a member to act as Chairman during the absence of the Chairman, but any such appointment ceases to have effect if a person is appointed as Deputy Chairman or the Deputy Chairman becomes available to act as Chairman.”.

**Meetings of  
Tribunal.**

**14.** Section 15 of the Principal Act is amended—

- (a) by omitting sub-section (4) and substituting the following sub-section:—

“(4) In the absence of the Chairman from a meeting of the Tribunal—

- (a) the Deputy Chairman shall preside; or
- (b) if the Deputy Chairman is not present at the meeting—a member nominated for the purpose by the Chairman shall preside.”; and
- (b) by omitting from paragraph (a) of sub-section (6) the words “(including the Chairman or a Deputy Chairman)”.

**Functions of  
Tribunals.**

**15.** Section 16 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(2) In exercising its functions under sub-section (1), the Tribunal shall have due regard to the need for the company or companies concerned to achieve a level of profitability that is sufficient to enable the company or companies to maintain an adequate level of investment and employment.”.

16. (1) Section 18 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the figures and word “30 days” and substituting the figures and word “90 days”;
- (b) by omitting from sub-section (2) the figures and word “30 days” and substituting the figures and word “90 days”; and
- (c) by omitting sub-section (8) and substituting the following sub-sections:—

Notification to Tribunal of proposed increases in prices of goods or services.

“(8) The Tribunal may, on its own initiative or on application by a company or companies, having regard to such matters as it considers relevant, by resolution authorize the Chairman to exempt a particular company, or companies included in a particular class of companies, either generally or in relation to particular goods or services or goods or services included in a particular class of goods or services, from the application of this section and may, by further resolution, authorize the Chairman to revoke such an exemption.

“(8A) In deciding whether to give an authorization under sub-section (8) in relation to a company, the Tribunal shall consider—

- (a) whether the company is in a position substantially to control a market for goods or services supplied by the company; and
- (b) whether the prices charged by the company during a substantial period have been fair and reasonable,

and, if the Tribunal is of the opinion that the company is not in a position substantially to control such a market or that the prices charged by the company during a substantial period have been fair and reasonable, the Tribunal shall consider that matter to be relevant for the purpose of deciding whether to give the authorization.

“(8B) For the purposes of sub-section (8A)—

- (a) a company shall be deemed to be in a position substantially to control a market for goods or services if that company and any related company or related companies are together in a position substantially to control that market; and
- (b) if a company, by reason of its share of a market for goods or services, or of its share of a market for goods or services combined with availability of technical knowledge, raw materials or capital, has the power to determine the prices, or control the production or distribution, of a substantial part of the goods or services in that market, the company shall be deemed to be in a position substantially to control that market.

“(8C) For the purposes of this section—

- (a) ‘market’ means a market in Australia; and
- (b) ‘market’, in relation to any goods or services, includes a market for other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services.

“(8D) The grant of an exemption in pursuance of an authorization given under sub-section (8) shall not be made subject to any condition.

“(8E) An exemption granted in pursuance of an authorization given under sub-section (8) shall not be revoked unless—

- (a) the Tribunal is satisfied that the circumstances by reason of which the exemption was granted no longer exist or that there has been a material change in those circumstances; and
- (b) the Chairman has given to the company or companies concerned 14 days’ notice in writing of his intention to revoke the exemption.”.

- (2) Notwithstanding the amendment made by paragraph (1) (c)—
  - (a) any authorization given by the Tribunal under sub-section 18 (8) of the Principal Act that was in force immediately before the commencement of this sub-section shall have effect as if it had been given under sub-section 18 (8) of the Principal Act as amended by this Act;
  - (b) any exemption granted in pursuance of an authorization given under sub-section 18 (8) of the Principal Act, being an exemption that was in force immediately before the commencement of this sub-section, shall be deemed to have been granted in pursuance of an authorization given under sub-section 18 (8) of the Principal Act as amended by this Act; and
  - (c) where an exemption granted in pursuance of an authorization given under sub-section 18 (8) of the Principal Act, being an exemption that was in force immediately before the commencement of this sub-section, is subject to a condition, that condition is of no effect.

Procedure at inquiries.

17. Section 21 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:—

“(1) Subject to sub-section (1A), an inquiry conducted by the Tribunal shall be held in public.

“(1A) If every party to an inquiry to be conducted by the Tribunal (other than a person or body of persons that became a party to the inquiry by virtue of section 20) gives notice in writing to the Tribunal, before the commencement of the inquiry,



stating that that party does not wish the inquiry to be held in public, the Tribunal may, if it thinks fit, hold the inquiry in private.

“(1B) In an inquiry—

- (a) evidence shall be taken on oath or affirmation; and
- (b) any party to the inquiry may make submissions to the Tribunal.”;
- (b) by inserting in sub-section (2), after the word “If”, the words “, at an inquiry held in public,”;
- (c) by inserting in sub-section (3), after the words “is so given”, the words “in an inquiry held in public”; and
- (d) by inserting in sub-section (4), after the word “made”, the words “in an inquiry held in public”.

**18. Section 22 of the Principal Act is amended—**

- (a) by omitting from sub-section (1) the words “such member as is, or such” and substituting the words “the Chairman and such other member as is, or such other”;
- (b) by inserting after sub-section (2) the following sub-section:—

“(2A) If—

- (a) a determination under sub-section (1) provides for the powers of the Tribunal under this Act for the purposes of an inquiry and report in relation to a matter to be exercised by a Division of the Tribunal of which an associate member is a member; and
- (b) that associate member was appointed for the period ending on the day on which the Tribunal completes an 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 member ceasing to be a member of that Division.”; and

- (c) by omitting sub-section (4) and substituting the following sub-section:—

“(4) If the Chairman is not present at a meeting of a Division of the Tribunal and the Deputy Chairman is not a member of that Division, a member nominated for the purpose by the Chairman shall preside.”.

Chairman  
may  
authorize  
Tribunal to  
sit in  
Divisions.

19. After section 35 of the Principal Act the following section is inserted:—

Biannual reports on price increases.

“35A. (1) The Tribunal shall, as soon as practicable after each 30 June and 31 December, prepare and furnish to the Minister a report setting out, in relation to each industry—

- (a) particulars of the most significant increases in prices that occurred during the period of 6 months that ended on that 30 June or 31 December, as the case may be, being increases in relation to which notices were given to the Tribunal, or the Tribunal held inquiries, under this Act; and
- (b) the principal matters that in the opinion of the Tribunal justified those increases.

“(2) The Minister shall cause the report to be laid before each House of Parliament within 15 sitting days of that House after the report is received by him.”

Formal amendments.

20. The Principal Act is amended as set out in the Schedule.

Salaries and allowances of holders of judicial and certain other offices.

21. Section 13 of the *Remuneration and Allowances Act 1973*<sup>3</sup> is amended by omitting sub-sections (4) and (5).

## SCHEDULE

Section 20

### FORMAL AMENDMENTS

Provision	Amendment
Sub-section 5 (1)	Omit “thirtieth day of June”, substitute “30 June”.
Sub-section 5 (2)	Omit “the thirtieth day of June” (wherever occurring), substitute “30 June”.
Sub-section 7 (2)	Omit “sixty-five” (wherever occurring), substitute “65”.
Sub-paragraph 11 (2) (b) (ii)	(a) Omit “fourteen”, substitute “14”. (b) Omit “twenty-eight days in any twelve”, substitute “28 days in any 12”.
Sub-section 23 (3)	Omit “One thousand dollars”, substitute “\$1,000”.
Section 25	(a) Omit “One thousand dollars”, substitute “\$1,000”. (b) Omit “three”, substitute “3”.
Section 26	(a) Omit “One thousand dollars”, substitute “\$1,000”. (b) Omit “three”, substitute “3”.
Section 31	Omit “Commonwealth” (wherever occurring), substitute “Australian”.
Sub-section 32 (2)	Omit “Commonwealth” (wherever occurring), substitute “Australian”.
Section 33	Omit “Public Service of the Commonwealth”, substitute “Australian Public Service”.
Sub-section 35 (1)	Omit “30th June”, substitute “30 June”.
Sub-section 35 (2)	Omit “fifteen”, substitute “15”.
Sub-section 35 (3)	Omit the sub-section.

**NOTES**

1. Act No. 182, 1976; assented to 13 December 1976.
2. Act No. 37, 1973, as amended. For previous amendments *see* Act No. 216, 1973 (as amended by No. 20, 1974); and No. 47, 1974.
3. Act No. 14, 1973, as amended. For previous amendments *see* Act No. 203, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 8, 1975; and Nos. 83 and 170, 1976.