

INDUSTRIES ASSISTANCE COMMISSION AMENDMENT ACT 1978

No. 1 of 1978

An Act to amend the *Industries Assistance Commission Act 1973*.

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 *Industries Assistance Commission Amendment Act 1978*.¹ Short title,
&c.
- (2) The *Industries Assistance Commission Act 1973*² 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.¹ Commence-
ment
3. The title of the Principal Act is repealed and the following title substituted: Title
“An Act relating to the provision of assistance to industries.”
4. Section 4 of the Principal Act is amended— Interpret-
ation
 - (a) by inserting after the definition of “Associate Commissioner” in sub-section (1) the following definition:
“ ‘Authority’ means the Temporary Assistance Authority established under section 25; ”;
 - (b) by omitting “*Customs Tariff (Dumping and Subsidies) Act 1961-1965*” from the definition of “duties” in sub-section (1) and substituting “*Customs Tariff (Anti-Dumping) Act 1975*”; and
 - (c) by inserting after the definition of “duties” in sub-section (1) the following definition:
“ ‘full-time member of the Authority’ means the person appointed under sub-section 25 (2); ”.
5. Section 6 of the Principal Act is amended by omitting sub-section (2). Outside
employment
6. Section 12 of the Principal Act is repealed and the following section substituted:
“12. (1) The Chairman, the other Commissioners and the Associate Commissioners shall be paid such remuneration as is determined by the Remuneration Tribunal. Remuner-
ation and
allowances

“(2) The Chairman, the other Commissioners and the Associate Commissioners shall be paid such allowances as are prescribed.

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

Suspension
and removal
from office

7. Section 16 of the Principal Act is amended by omitting sub-section (7) and substituting the following sub-section:

“(7) Where a Commissioner or Associate Commissioner who is an eligible employee for the purposes of the *Superannuation Act 1976* 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.”.

Policy
guidelines
for
Commission

8. Section 22 of the Principal Act is amended—

(a) by omitting paragraph (a) of sub-section (1) and substituting the following paragraphs:

“(a) achieve sustained growth in the Australian economy through balanced development of Australian industries with a view to providing increased opportunities for employment and investment;

“(aa) improve the efficiency with which the community’s productive resources are used, while ensuring that any measures to achieve changes in the structure of industry are taken only after having due regard to the capacity of the economy to sustain those changes and to absorb any members of the workforce displaced by those changes;”; and

(b) by omitting sub-section (2) and substituting the following sub-sections:

“(2) If at any time the Minister considers that there are additional matters to which the Commission should have regard in the performance of its functions, he may, by notice in writing to the Commission, inform the Commission accordingly and the Commission shall have regard to those matters.

“(3) The Minister may, by notice in writing to the Commission, give directions as to the priorities to be observed by the Commission in having regard to the matters mentioned in sub-section (1) or contained in any notice under sub-section (2) and the Commission shall comply with any such directions.

“(4) The Minister shall cause a copy of any notice given to the Commission under sub-section (2) or (3) to be published in the *Gazette* as soon as practicable after the notice is given.

“(5) Sub-section (1) applies in relation to the performance of functions by the Authority in like manner as it applies in relation to the performance of functions by the Commission and, for the

purposes of the application of sub-section (1) by virtue of this sub-section, a reference in sub-section (1) to the Commission shall be read as a reference to the Authority.”.

9. Section 23 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (5) “*Customs Tariff (Dumping and Subsidies) Act 1961-1965*” and substituting “*Customs Tariff (Anti-Dumping) Act 1975*”; and
- (b) by adding at the end thereof the following sub-section:

Reference of
matters to
Commission

“(7) Where, under this section, the Minister has referred a matter to the Commission for inquiry and report, the Minister may, at any time before he has received a report from the Commission in pursuance of the reference, withdraw or amend the reference.”.

10. After section 23 of the Principal Act the following section is inserted:

“23A. Where the Minister has referred 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, the Commission, in its report on that matter—

Commission
to report on
certain
matters

- (a) shall report on the level of assistance required to ensure that the level of activity and employment in the industry or group or groups of industries to which the report relates is not less than that which existed at the time when the reference was made;
- (b) if the Commission recommends the giving to the industry or group or groups of industries of assistance that would result in a level of assistance less than the level referred to in paragraph (a), shall state its reasons for not recommending assistance that would avoid that result;
- (c) shall report whether, in the view of the Commission, the structure of the industry or of the group or groups of industries can be improved, and, if so, the manner in which, and the measures by which, the improvement can be achieved and the consequences of such improvement;
- (d) if the Commission recommends the giving, continuance or withdrawal of assistance to an industry or group or groups of industries, shall report on the probable consequences of the taking of measures to give effect to those recommendations, including—
- (i) economic and social consequences; and
- (ii) employment consequences, both generally and in particular regions; and
- (e) shall report on any other matter requested by the Minister.”.

Power of Commission to inquire and report on its own initiative

11. Section 24 of the Principal Act is amended by omitting from paragraph (a) of sub-section (3) “*Customs Tariff (Dumping and Subsidies) Act 1961-1965*” and substituting “*Customs Tariff (Anti-Dumping) Act 1975*”.

Heading

12. Before section 25 of the Principal Act the following heading is inserted:

“*Division 1—The Temporary Assistance Authority*”.

Temporary Assistance Authority

13. Section 25 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “, comprising not more than three persons, appointed by the Governor-General on a full-time or on a part-time basis as appropriate”; and
- (b) by omitting sub-section (2) and substituting the following sub-sections:

“(2) Subject to section 27, the Authority shall be constituted by a person appointed by the Governor-General on a full-time basis.

“(3) Sections 6 and 7, sub-sections 13 (1) and 14 (1) and sections 15 and 16 apply in relation to the full-time member of the Authority in like manner as those provisions apply in relation to a Commissioner and, for the purposes of the application of those provisions by virtue of this sub-section, a reference in any of those provisions to a Commissioner shall be read as a reference to the full-time member of the Authority.

“(4) The full-time member of the Authority shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

“(5) The full-time member of the Authority shall be paid such allowances as are prescribed.

“(6) Sub-sections (4) and (5) have effect subject to the *Remuneration Tribunals Act 1973*.”.

14. Sections 26, 27, 28, 29 and 30 of the Principal Act are repealed and the following sections substituted:

Acting appointment

“26. (1) Where the full-time member of the Authority 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 the full-time member of the Authority, the Minister may appoint a person to act as the full-time member of the Authority during the absence or suspension or until the filling of the vacancy.

“(2) A person appointed to act as the full-time member of the Authority during a vacancy in the office of the full-time member of the Authority shall not continue to act as the full-time member of the Authority after the expiration of 12 months after the occurrence of the vacancy.

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

“(4) Subject to this section, a person acting in the office of the full-time member of the Authority holds office on such terms and conditions as the Minister determines.

“(5) While the appointment of a person under sub-section (1) remains in force, he has, and may exercise, all the powers, and shall perform all the functions, of the full-time member of the Authority.

“(6) A person appointed to act as the full-time member of the Authority may resign his appointment by writing under his hand delivered to the Minister.

“(7) The validity of anything done by a person acting in the office of the full-time member of the Authority shall not be called in question on the ground that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

“27. (1) The Minister, after consultation with the full-time member of the Authority, may appoint a person to be an associate member, or persons to be associate members, of the Authority. Associate members

“(2) An associate member of the Authority shall be appointed for a period commencing on a day specified in the instrument of his appointment and ending on the day on which the Authority completes its inquiry and report in relation to a matter specified in that instrument, but is eligible for re-appointment.

“(3) An associate member of the Authority shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

“(4) An associate member of the Authority shall be paid such allowances as are prescribed.

“(5) Sub-sections (3) and (4) have effect subject to the *Remuneration Tribunals Act 1973*.

“(6) Subject to this section, an associate member of the Authority holds office on such terms and conditions (if any) as the Minister determines.

“(7) Where an associate member has, or associate members have, been appointed under sub-section (1) for the purposes of a particular inquiry, the full-time member of the Authority may, by writing signed by

him, determine that the powers of the Authority under this Act in relation to that inquiry may be exercised by a Division of the Authority constituted by—

- (a) the associate member or associate members; or
- (b) the full-time member of the Authority and the associate member or associate members,

and, where such a determination is made, the Authority shall, for the purposes of the inquiry, be deemed to consist of that Division of the Authority.

“(8) A Division of the Authority may exercise powers of the Authority under this Act notwithstanding that another Division of the Authority, or the Authority as constituted by the full-time member of the Authority, is exercising powers of the Authority at the same time.

“(9) In this section, a reference to the full-time member of the Authority shall, if there is a person acting in the office of the full-time member of the Authority, be read as a reference to the person so acting.

Disclosure of
financial
interests

“28. (1) The full-time member of the Authority shall give written notice to the Minister of all direct or indirect pecuniary interests that he has or acquires in any business carried on in Australia or in any body corporate carrying on such a business.

“(2) Where an associate member of the Authority 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 an associate member of the Authority he shall, to the best of his knowledge, disclose that interest to the full-time member of the Authority.

“(3) The full-time member of the Authority or an associate member of the Authority 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 is disclosed in any report in which he participates.

“(4) In this section, a reference to the full-time member of the Authority shall, if there is a person acting in the office of the full-time member of the Authority, be read as a reference to the person so acting.

“Division 2—Provision of Temporary Assistance

Interpret-
ation

“29. In this Division—

- (a) a reference to the taking of action to provide temporary assistance to an industry following the receipt by the Minister of a report of the Authority under section 30A in relation to the industry shall be read as a reference to the taking of action to provide assistance to the industry, being action that, by reason of the operation of sub-section 23 (3), could not have been taken but for the application of sub-section 30B (1) in relation to that report; and

- (b) a reference to temporary assistance being provided to an industry shall be read as a reference to assistance being provided to an industry in consequence of the taking of action of the kind referred to in paragraph (a).

“29A. The principal purpose of an inquiry by the Authority under this Part in relation to an industry is to enable the Authority to report to the Minister on the level of assistance to the industry that is necessary to maintain the existing level, or a previously existing level, of activity and employment in the industry, and the Authority shall perform its functions under this Part accordingly.

Purpose of inquiry

“30. (1) Where it appears to the Minister that urgent action may be necessary to provide assistance to an industry that is experiencing difficulty by reason of the importation of any goods, he may request the Authority to undertake an inquiry in relation to that industry and to report to the Minister—

Request by Minister for inquiry by Temporary Assistance Authority

- (a) whether it is necessary that urgent action be taken to provide assistance to that industry; and
- (b) if such urgent action is necessary—the nature and extent of the assistance that the Authority recommends should be provided to the industry.

“(2) Where, under sub-section (1), the Minister has requested the Authority to undertake an inquiry in relation to an industry, the Minister may, at any time before he has received a report from the Authority in pursuance of the request, withdraw or amend the request.

“(3) Where the Minister amends a request to the Authority to undertake an inquiry, sub-section 30A (1) applies in relation to the inquiry as if the reference in that sub-section to the date on which the request was made were a reference to the date on which the Minister amended the request.

“30A. (1) Where the Authority is requested under section 30 to undertake an inquiry in relation to an industry, the Authority shall—

Inquiry and report by Temporary Assistance Authority

- (a) after giving notice of the inquiry in accordance with section 32, forthwith undertake the inquiry; and
- (b) as soon as practicable, but not later than 45 days after the date on which the request was made, report to the Minister in accordance with the request and recommend to the Minister whether or not a matter relating to the giving or continuance of assistance to the industry should forthwith be referred to the Commission under section 23 for inquiry and report.

“(2) Part V applies in relation to an inquiry conducted by the Authority under this section in like manner as that Part applies in relation to an inquiry conducted by the Commission and, for the purpose of the application of that Part in relation to an inquiry by virtue of this sub-section—

- (a) a reference in that Part other than section 34 and sub-section 40 (1) to the Commission shall be read as a reference to the Authority;
- (b) a reference in that Part other than section 34 to a Commissioner shall be read as a reference to—
 - (i) if the Authority is constituted for the purposes of the inquiry by one person only—that person; and
 - (ii) if the Authority is constituted for the purposes of the inquiry by 2 or more persons—any of those persons;
- (c) the reference in section 34 to the Chairman or a Commissioner who has been nominated to preside at a meeting of the Commission shall be read as a reference to—
 - (i) if the Authority is constituted for the purposes of the inquiry by one person only—that person;
 - (ii) if the Authority is constituted for the purposes of the inquiry by 2 or more persons including the full-time member of the Authority—the full-time member of the Authority; or
 - (iii) if the Authority is constituted for the purposes of the inquiry by 2 or more persons not including the full-time member of the Authority—one of those persons authorized by the full-time member of the Authority to exercise powers under section 34 in relation to the inquiry;
- (d) the reference in section 34 to the Commission (second occurring) shall be read as a reference to the Authority; and
- (e) the reference in sub-section 40 (1) to the Commission (second occurring) shall be read as a reference to the Authority.

“(3) When undertaking an inquiry as to whether it is necessary that urgent action be taken to provide assistance to an industry that is experiencing difficulty by reason of the importation of any goods, the Authority shall inquire into the question whether those goods are being imported in such increased quantities as to cause or threaten serious injury to that industry in relation to like or directly competitive goods produced by the industry and shall have regard to the results of the inquiry into that question.

Action to
provide
temporary
assistance

“30B. (1) Subject to this Division, where the Minister has received a report of the Authority under section 30A in relation to an industry, sub-section 23 (3) does not prevent the taking of action to provide assistance to the industry in accordance with this Division.

“(2) Where, following the receipt by the Minister of a report of the Authority under section 30A in relation to an industry, action is taken to provide temporary assistance to the industry, the Minister shall cause a copy of the report to be laid before each House of the Parliament within 7 sitting days of that House after the day on which the action is taken.

“(3) Where, following the receipt by the Minister of a report of the Authority under section 30A in relation to an industry, action is taken to provide temporary assistance to the industry, the Minister shall, as soon as practicable after that assistance is provided, or commences to be provided, cause to be published in the *Gazette* a notice specifying the nature of that assistance and stating that the assistance has been provided, or has commenced to be provided, following the receipt by the Minister of the report and, where such a notice is published, sub-section (1) ceases to have effect in relation to the report.

“30C. Where temporary assistance (in this section referred to as the ‘relevant assistance’) commences to be provided to an industry and, during the period of 4 years immediately preceding the date on which the relevant assistance commences to be provided, assistance was provided to the industry for a period of 2 years, or for periods the sum of which is not less than 2 years, being assistance provided to the industry as a result of—

Reference of matters to Commission

- (a) the taking of action by the Minister under section 29 or 30 of this Act as in force at any time before the commencement of the *Industries Assistance Commission Amendment Act 1978* or as continued in force by section 18 of that last-mentioned Act;
- (b) the taking of action to provide temporary assistance to the industry following the receipt by the Minister of a report of the Authority under section 30A in relation to the industry; or
- (c) the taking of action to provide assistance to the industry for a limited period following the receipt by the Minister of a report of the Commission in relation to the industry,

the Minister shall, forthwith after the relevant assistance commences to be provided, refer to the Commission for inquiry and report under section 23 a matter relating to the continuance or withdrawal of assistance to the industry.

“30D. (1) Where temporary assistance has commenced to be provided to an industry and it appears to the Minister that the assistance may need to continue to be provided to the industry after the expiration of the period of 12 months after the date on which the assistance commenced to be provided, the Minister may request the Commission or the Authority to undertake an inquiry in relation to the industry and to report to the Minister whether the assistance should continue to be provided to the industry after the expiration of that period of 12 months.

Continuation of temporary assistance beyond 12 months

“(2) Where, under sub-section (1), the Minister requests the Commission to undertake an inquiry, the Minister shall specify a period within which the Commission is to report to the Minister in accordance with the request.

“(3) Where, under sub-section (1), the Minister requests the Authority to undertake an inquiry, the Minister shall specify a period, not

exceeding 45 days, within which the Authority is to report to the Minister in accordance with the request.

“(4) Temporary assistance shall not continue to be provided to an industry after the expiration of the period of 12 months after the date on which the assistance commenced to be provided unless, before the expiration of that period of 12 months, the Minister has received a report of the Commission or of the Authority in relation to that assistance in pursuance of a request by the Minister under sub-section (1).

Continuation
of temporary
assistance
beyond 2
years

“30E. (1) Where—

- (a) temporary assistance has been provided to an industry for a period of 12 months after the date on which the assistance commenced to be provided; and
- (b) it appears to the Minister that the assistance may need to continue to be provided to the industry after the expiration of the period of 2 years after the date on which the assistance commenced to be provided,

the Minister may request the Commission to undertake an inquiry in relation to the industry and to report to the Minister whether the assistance should continue to be provided to the industry after the expiration of that period of 2 years.

“(2) Where, under sub-section (1), the Minister requests the Commission to undertake an inquiry, the Minister shall specify a period within which the Commission is to report to the Minister in accordance with the request.

“(3) Temporary assistance shall not continue to be provided to an industry after the expiration of the period of 2 years after the date on which the assistance commenced to be provided unless, before the expiration of that period of 2 years, the Minister has received a report of the Commission in relation to that assistance in pursuance of a request by the Minister under sub-section (1).

Inquiry and
report

“30F. (1) Where the Authority is requested under section 30D, or the Commission is requested under section 30D or 30E, to undertake an inquiry and to report to the Minister, the Authority or Commission, as the case may be, shall—

- (a) after giving notice of the inquiry in accordance with section 32, forthwith undertake the inquiry; and
- (b) report to the Minister in accordance with the request within the time specified by the Minister as the time within which the Authority or Commission, as the case may be, was to report in accordance with the request.

“(2) Sub-section 30A (2) applies in relation to an inquiry by the Authority under this section in like manner as that sub-section applies in relation to an inquiry by the Authority under section 30A.

“(3) Where the Minister has received a report of the Commission in pursuance of a reference required to be made by section 30C or in pursuance of a request under section 30D or 30E, he shall, as soon as practicable after the receipt of the report, notify in the *Gazette* the fact that he has received the report and the date upon which he received the report.

“30G. (1) Where—

- (a) following the receipt by the Minister of a report of the Authority under section 30A in relation to an industry, action has been taken to provide temporary assistance to the industry by means of, or by means of measures that include, the temporary prohibition or restriction of the importation of goods; and
- (b) following the taking of that action, the Minister has received a report of the Commission in relation to the industry in pursuance of a reference required to be made by section 30C or in pursuance of a request under section 30E,

Limitation
on import
restrictions
and duties

the Minister shall, before the expiration of the period of 3 months after the date on which he received the report of the Commission, take action for the purpose of the removal of the prohibition or restriction.

“(2) Sub-section 30B (1) does not authorize the taking of action to provide assistance to an industry following the receipt by the Minister of a report of the Authority under section 30A in relation to the industry, being assistance that consists of or includes the collection of a duty on any goods, unless the action is for the purpose of the collection of a duty on those goods that is not to operate after the expiration of 3 months after the date on which the Minister receives a report of the Commission—

- (a) in pursuance of a reference that, by virtue of section 30C, is required to be made to the Commission forthwith after the assistance commences to be provided; or
- (b) in pursuance of a request by the Minister under section 30E in relation to the assistance.

“30H. Where—

- (a) by reason of section 30D or 30E, temporary assistance is not to continue to be provided to an industry after the expiration of the period of 12 months, or the period of 2 years, as the case may be, after the date on which the assistance commenced to be provided; and
- (b) action by the Minister is required to ensure that the temporary assistance does not continue to be provided to the industry after the expiration of that period of 12 months or 2 years, as the case may be,

Action by
Minister to
terminate
assistance

the Minister shall take that action.

“30J. (1) Subject to sub-section 23 (3), the termination of the provision of temporary assistance to an industry by reason of section 30D,

Operation of
section 23

30E or 30G does not prevent the taking of further action to provide assistance to that industry.

“(2) Sub-section 23 (3) does not prevent the taking of action to terminate, or to reduce the extent of, temporary assistance that is being provided to an industry.

“Division 3—Miscellaneous

Annual
report by
Temporary
Assistance
Authority

“30K. (1) The Authority shall, within 90 days after each year ending on 30 June, furnish to the Minister a report on the operations of the Authority during that year.

“(2) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the date of receipt of the report by the Minister.

“(3) The copy of the 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 report relates in respect of each report made to the Minister by the Authority during that year or a preceding year.”.

Staff

15. Section 43 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(5) The Chairman shall ensure that the Authority is provided with such assistance as it requires for the purpose of the performance of its functions under Part IV.”.

Application
of Officers’
Rights
Declaration
Act

16. Section 44 of the Principal Act is amended—

- (a) by omitting “or Associate Commissioner,” (first occurring) and substituting “, as an Associate Commissioner or as the full-time member of the Authority”; and
- (b) by omitting from paragraph (b) “ or Associate Commissioner” and substituting “, as an Associate Commissioner or as the full-time member of the Authority”.

Annual
report

17. Section 45 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “(including the operations of Commissioners or Associate Commissioners under Part IV)”;
- and
- (b) by omitting from sub-section (5) “, or by a Commissioner or Associate Commissioner under Part IV,”.

Transitional

18. (1) Notwithstanding the repeal effected by section 14 of this Act, sections 27 and 28 of the Principal Act continue in force for the purpose of enabling the Authority to complete an inquiry that it had been requested to undertake before the commencement of this Act and to report to the Minister in accordance with such a request.

(2) For the purpose of conducting or completing an inquiry under sub-section (1), the Authority shall be constituted in accordance with section 25 of the Principal Act as amended by this Act.

(3) Notwithstanding the repeal effected by section 14 of this Act, sections 29 and 30 of the Principal Act continue to apply in relation to reports made by the Temporary Assistance Authority before the commencement of this Act or made by the Temporary Assistance Authority after the commencement of this Act in accordance with section 28 of the Principal Act as continued in force by sub-section (1) of this section.

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

Formal
amendments

SCHEDULE

Section 19

FORMAL AMENDMENTS

Provision	Amendment
Paragraph 4 (2) (c)	(a) Omit "Australian", substitute "Commonwealth". (b) Omit "Australia" (wherever occurring), substitute "the Commonwealth".
Paragraph 4 (2) (d)	Omit "Australia", substitute "the Commonwealth".
Sub-section 22 (1)	Omit "Australian" (wherever occurring), substitute "Commonwealth".
Section 23	(a) Omit "Australian" (wherever occurring), substitute "Commonwealth". (b) From sub-section (3), omit "Australia" (wherever occurring), substitute "the Commonwealth".
Sub-section 24 (2)	Omit "Australian", substitute "Commonwealth".
Section 41	Omit "Australia", substitute "the Commonwealth".
Paragraph 45 (2) (a)	Omit "Australian", substitute "Commonwealth".
Sub-section 45 (3)	Omit "Australian" (wherever occurring), substitute "Commonwealth".

NOTES

1. Act No. 1, 1978; assented to 9 March 1978.
2. Act No. 169, 1973, as amended. For previous amendments *see* Act No. 91, 1976.