

Prices Justification Amendment Act 1979

No. 24 of 1979

An Act to amend the *Prices Justification Act 1973*.

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

Short title,
&c.

1. (1) This Act may be cited as the *Prices Justification Amendment Act 1979*.¹

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

Commence-
ment

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹

Interpret-
ation

3. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “member” in sub-section (1) the following definitions:

“ ‘notified goods or services’, in relation to a company, means goods or services of a description to which a determination under section 17B that is in force in respect of the company relates;

‘prescribed company’ means a company in respect of which there is in force at the relevant time a determination under section 17B;

‘prices justification inquiry’ means an inquiry of the kind referred to in paragraph 16 (2) (a);”;

(b) by inserting after sub-section (1) the following sub-section:

“(1A) A reference in this Act to the supply of goods or services or to goods or services supplied shall be read as a reference to the supply of goods or services by a company or goods or services supplied by a company, as the case may be.”

Holding
companies,
subsidiaries
and related
companies

4. Section 4 of the Principal Act is repealed.

Prescribed
companies

5. Section 5 of the Principal Act is repealed.

6. Sections 16 and 17 of the Principal Act are repealed and the following sections substituted:

“16. (1) The functions of the Tribunal are to conduct inquiries in accordance with this Part in relation to prices for the supply of goods or services, and to report to the Minister the results of every such inquiry. Functions of Tribunal

“(2) An inquiry under this Part may be either—

- (a) a prices justification inquiry, that is to say an inquiry as to whether the price or prices at which a company or companies (whether a prescribed company or prescribed companies or not) supplies or supply, or proposes or propose to supply, goods or services of a particular description is or are justified and, if the Tribunal is of the opinion that the price or any of the prices is not justified, what lower price for the supply by the company or companies concerned of goods or services of that description would be justified; or
- (b) an inquiry into a matter specified by the Minister in a notice under paragraph 17 (1) (b).

“(3) The Tribunal shall conduct such prices justification inquiries as it is required to conduct by notice given by the Minister under section 17 and may, with the approval of the Minister, conduct such other prices justification inquiries as it thinks fit.

“(4) The Tribunal shall conduct such inquiries other than prices justification inquiries as it is required to conduct by notice given by the Minister under section 17.

“(5) In conducting a prices justification inquiry and making its report on such an inquiry, 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.

“17. (1) The Minister may, by notice in writing under his hand delivered to the Chairman, require the Tribunal— Power of Minister to require Tribunal to conduct an inquiry

- (a) to conduct a prices justification inquiry; or
- (b) to conduct an inquiry, not being a prices justification inquiry, into a specified matter or specified matters related to the prices at which goods or services are supplied,

and to report to him the results of the inquiry.

“(2) A notice under sub-section (1) shall either—

- (a) specify the description of the goods or services to which the inquiry is to relate, without specifying the particular company or companies in relation to which the inquiry is to be conducted; or
- (b) specify both—
 - (i) the description of the goods or services to which the inquiry is to relate; and
 - (ii) the particular company or companies in relation to which the inquiry is to be conducted.

“(3) Where a notice under this section is in accordance with paragraph (2) (a), the Tribunal shall determine the particular company or companies in relation to which the inquiry will be conducted, and the Chairman shall give notice in writing of the determination to the Minister.

“(4) Where the Minister by a notice under this section requires the Tribunal to conduct an inquiry other than a prices justification inquiry, he may, in the notice, give such directions as he thinks fit as to the conduct of the inquiry or the matters to be taken into consideration.

“(5) A notice under sub-section (1) may specify the time within which the inquiry must be completed and the report submitted and the Tribunal shall complete the inquiry and submit the report within that time or within that time as extended by the Minister in his discretion.

“(6) Where a notice under sub-section (1) does not specify the time within which the inquiry must be completed and the report submitted, the Tribunal shall complete the inquiry and submit the report within the time specified in paragraph 19 (1) (c) or within that time as extended by the Minister in his discretion.

Directions of
Minister as
to special
consider-
ations

“17A. The Minister may, by notice in writing under his hand delivered to the Chairman, direct the Tribunal to give special consideration, in exercising its functions and powers under this Act, to the matter or matters specified in the notice and the Tribunal shall comply with any such direction.

Determin-
ation that
company is
prescribed
company

“17B. (1) Where a prices justification inquiry in respect of a company has been completed, the Tribunal may, on or before, or not later than 7 days after, the day on which a copy of its report on the inquiry is sent to the company, determine that the company is to be a prescribed company for the purposes of this Act in relation to goods or services of a specified description, being a description of goods or services to which the inquiry related, for a period commencing on the day on which notice of the determination is served on the company in accordance with this section and ending on a specified day, being—

- (a) a day not later than 12 months after the day on which the determination is made; or
- (b) a later day approved by the Minister.

“(2) Where the Tribunal makes a determination in accordance with sub-section (1), it shall, not later than 7 days after the day on which the determination is made, serve on the company notice of the determination, under the hand of the Chairman, containing full particulars of the determination, and the determination takes effect on the day on which the notice is served.

“(3) In all proceedings—

- (a) a certificate under the hand of the Chairman certifying that—

- (i) a determination under this section in the terms specified in the certificate was made by the Tribunal on a specified day; and
 - (ii) notice of the determination in a form specified in the certificate was, on a specified day, duly served on the company to which the determination relates, is *prima facie* evidence of the matters certified; and
- (b) a document purporting to be such a certificate shall, unless the contrary is proved, be taken to be such a certificate.

“(4) A company is a prescribed company for the period specified in a determination relating to the company, or if that period is extended or further extended by the Minister in pursuance of sub-section (5), for that period as extended or further extended.

“(5) Within the period specified in a determination relating to a company, or within any extension or further extension of that period, the Minister may, by writing under his hand delivered to the Chairman, extend or further extend for such period as he thinks fit the period for which the company is to be a prescribed company.

“(6) Where the Minister extends or further extends a period in pursuance of sub-section (5), the Tribunal shall forthwith serve notice in writing of the extension or further extension on the company concerned.

“(7) The Tribunal may revoke a determination made in accordance with sub-section (1) or amend such a determination so as to exclude goods or services of a particular description from the operation of the determination.”

7. Section 18 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “notified” after “prescribed company supplies”;
- (b) by inserting in sub-section (2) “notified” after “prescribed company supplies”;
- (c) by inserting in sub-section (2A) “notified” after “prescribed company supplies”;
- (d) by inserting in sub-section (5) “is considering whether to hold or” after “stating that the Tribunal”;
- (e) by omitting from paragraph (a) of sub-section (5) “or” (last occurring);
- (f) by inserting after paragraph (a) of sub-section (5) the following paragraph:

“(aa) where the Tribunal serves on the company a notice under sub-section 19AA (2) or 19AA (4) that it will not proceed with the inquiry, the day on which that notice is served; or”; and

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

- (g) by omitting sub-sections (8), (8A), (8B), (8C), (8D), (8E), (9) and (10) and substituting the following sub-section:

“(8) This section applies subject to section 18B.”

8. After section 18A of the Principal Act the following section is inserted:

Interim price
increases

“18B. (1) The Tribunal may, at any time, on the application of—

- (a) a prescribed company that has given to the Tribunal a notice referred to in paragraph 18 (1) (a), 18 (2) (a) or 18 (2A) (c); or
(b) a company that has been served with a notice referred to in sub-section 18A (1),

give to the company a notice stating that the company is permitted, from a specified date until—

- (c) in the case of a company referred to in paragraph (a), the day on which the prescribed period for the purposes of section 18 expires; and
(d) in the case of a company referred to in paragraph (b), the prescribed day for the purposes of section 18A,

to supply goods or services of a particular description in a specified locality on specified terms and conditions at the price or prices specified in the notice.

“(2) The Tribunal may at any time revoke a notice given under this section, and the notice shall cease to be in effect from the day on which it is revoked.

“(3) Where a notice is given to a company under this section and while the notice continues to be in effect the company is not guilty of an offence against section 18 or 18A by reason only of supplying goods or services in accordance with the notice.”

Inquiry and
report by
Tribunal on
requirement
by Minister

9. Section 19 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “, or decides on its own initiative,”;
(b) by omitting from sub-section (1) “as to whether the price or prices at which a company or companies supplies or supply, or proposes or propose to supply, goods or services of a particular description is or are justified”;
(c) by omitting paragraph (a) from sub-section (1) and substituting the following paragraph:

“(a) serve notice in writing on the company or each of the companies—

- (i) specified in the notice given under section 17 in accordance with paragraph 17 (2) (b); or
(ii) determined in accordance with sub-section 17 (3),

stating that the Tribunal intends to hold the inquiry;”;
and

- (d) by omitting from paragraph (c) of sub-section (1) “complete” and substituting “subject to section 17, complete”.

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

“19AA. (1) Subject to this section, the Tribunal shall, before deciding to hold on its own initiative a prices justification inquiry—

Inquiry and
report by
Tribunal on
its own
initiative

- (a) publish by advertisement in the *Gazette*, and also publish in each State and in the Australian Capital Territory and the Northern Territory by advertisement in a newspaper circulating in that State or Territory, a notice stating that the Tribunal is considering whether to hold the inquiry and inviting interested persons to make submissions in writing to the Tribunal, within 7 days of the day on which the notice is published in the *Gazette*, on the question whether such an inquiry should be held;
- (b) not later than 7 days after the publication of the notice under paragraph (a), serve notice in writing on the company or each of the companies concerned—
- (i) stating that the Tribunal is considering whether to hold the inquiry;
 - (ii) inviting the company to make submissions in writing to the Tribunal, not later than 7 days from the day on which the notice is served on the company, on the question whether such an inquiry should be held; and
 - (iii) notifying the company that it may within that period of 7 days request a conference with the Tribunal on the question whether such an inquiry should be held; and
- (c) when requested, within the period referred to in sub-paragraph (b) (iii), by a company concerned to hold a conference on the question whether such an inquiry should be held, afford to the company an opportunity of conferring with the Tribunal on that question at a place determined by the Tribunal and on a day determined by the Tribunal, being a day not earlier than the eighth day, and not later than the twenty-first day, after the service of the notice on the company.

“(2) Where, after the publication of a notice referred to in paragraph (1) (a), the Tribunal decides that it will not proceed with the inquiry it shall forthwith serve notice on the company or companies concerned that it will not proceed with the inquiry.

“(3) If, after paragraphs (1) (a), (b) and (c) have been complied with, the Tribunal decides that the inquiry should be held, it shall apply to the Minister for approval to hold the inquiry and the Minister shall, as

soon as practicable, inform the Tribunal whether he approves the holding of the inquiry.

“(4) If the Minister informs the Tribunal that he does not approve the holding of the inquiry, the Tribunal shall forthwith serve notice on the company or companies concerned that it will not proceed with the inquiry.

“(5) If the Minister informs the Tribunal that he approves the holding of the inquiry, the Tribunal shall proceed with the inquiry as if it were an inquiry to which section 19 applied except that the requirements as to time imposed by sub-paragraph 19 (1) (c) (i) or (ii) may be varied by the Tribunal with the consent of the company or companies concerned.

“(6) The Tribunal shall allow to attend at and participate in the conference referred to in paragraph (1) (c) any person who, in the opinion of the Tribunal, has a substantial interest in that conference.”.

Procedure at
inquiries

11. Section 21 of the Principal Act is amended by inserting after sub-section (5) the following sub-sections:

“(6) Notwithstanding anything contained in this section, if a company claims that information made available, or to be made available, by or on behalf of the company (whether in oral evidence or in a written statement, submission or other document) at the hearing of an inquiry is confidential information and the Tribunal is satisfied that the claim is justified, the Tribunal shall take all reasonable steps to ensure that the information is not, without the consent of the company, disclosed, in the proceedings or by the Tribunal, to any person other than—

- (a) a member or associate member of the Tribunal;
- (b) counsel assisting the Tribunal; or
- (c) a consultant to the Tribunal or member of the staff of the Tribunal receiving the information in the course of his duties,

but this sub-section does not apply in relation to a disclosure of information other than information relating to a secret formula or process where the disclosure is, in the opinion of the Tribunal, necessary in the public interest.

“(7) In sub-section (6) ‘confidential information’ means information relating to a secret formula or process or other information the disclosure of which would damage the competitive position of the company.”.

Power to
obtain
information

12. Section 23 of the Principal Act is amended—

- (a) by omitting paragraph (a) of sub-section (2);
- (b) by omitting from paragraphs (b) and (c) of sub-section (2) “as to whether the price at which the company supplies or proposes

to supply goods or services is justified” (wherever occurring) and substituting “in relation to the company”; and

- (c) by omitting sub-section (5) and substituting the following sub-sections:

“(5) Notwithstanding anything contained in this section, if a company claims that information furnished, or contained in a document produced, by the company in accordance with this section is confidential information and the Tribunal is satisfied that the claim is justified, the Tribunal shall take all reasonable steps to ensure that the information is not, without the consent of the company, disclosed, in the proceedings or by the Tribunal, to any person other than—

- (a) a member or associate member of the Tribunal;
- (b) counsel assisting the Tribunal; or
- (c) a consultant to the Tribunal or member of the staff of the Tribunal receiving the information in the course of his duties,

but this sub-section does not apply in relation to a disclosure of information other than information relating to a secret formula or process where the disclosure is, in the opinion of the Tribunal, necessary in the public interest.

“(6) In sub-section (5) ‘confidential information’ means information relating to a secret formula or process or other information the disclosure of which would damage the competitive position of the company.”.

13. After section 34 of the Principal Act the following section is inserted:

“34A. (1) This section applies to a person who is or has been— Secrecy

- (a) a member or associate member of the Tribunal;
- (b) counsel assisting the Tribunal;
- (c) a consultant to the Tribunal; or
- (d) a member of the staff of the Tribunal.

“(2) Subject to sub-section (3), a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty or function under or in connection with this Act—

- (a) make a record of, or divulge or communicate to any person, any information acquired by reason of his office or appointment under this Act or in the performance of his duties, or the exercise of his powers or functions, under or in connection with this Act, being information disclosed by a person or obtained from a person for the purposes of this Act; or
- (b) produce to any person a document supplied to, lodged with, or otherwise acquired by, the Tribunal for the purposes of this Act.

Penalty: \$1000 or imprisonment for 3 months.

“(3) Sub-section (2) does not apply in relation to information or documents made available to the public by the Tribunal or to information contained in oral evidence given in public at the hearing of an inquiry.

“(4) A person to whom this section applies shall not be required to produce in a court any document referred to in paragraph (2) (b) or to divulge or to communicate to a court any information referred to in paragraph (2) (a), except when it is necessary to do so for the purposes of this Act.

“(5) In this section—

‘court’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

‘produce’ includes permit access to, and ‘production’ has a corresponding meaning.”

Biannual reports on price increases

14. Section 35A of the Principal Act is repealed.

Inquiries commenced but not completed before commencement of this Act

15. Where in relation to an inquiry in respect of a company a notice under paragraph 19 (1) (a) of the Principal Act was served on the company before the commencement of this Act, the Tribunal shall conduct and complete the inquiry as if the amendments made to the Principal Act by this Act had not been made.

Application

16. A reference in section 17B of the Principal Act, as amended by this Act, to a prices justification inquiry in respect of a company shall be read as a reference to a prices justification inquiry in connection with which—

- (a) a notice under paragraph 19 (1) (a) of the Principal Act was served on the company on or before the commencement of this Act and a report under paragraph 19 (1) (c) of the Principal Act was sent to the Minister after the commencement of this Act; or
- (b) a notice under paragraph 19 (1) (a) of the Principal Act was served on the company after the commencement of this Act.

NOTES

1. Act No. 24, 1979; assented to 30 May 1979.
2. Act No. 37, 1973, as amended. For previous amendments *see* Act No. 216, 1973; No. 47, 1974; Nos. 91, 157 and 182, 1976; and No. 111, 1977.