



Industries Assistance Commission Amendment Act (No. 2) 1983

No. 75 of 1983

An Act to amend the *Industries Assistance Commission Act 1973*, and for related purposes

[Assented to 3 November 1983]

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

Short title, &c.

1. (1) This Act may be cited as the *Industries Assistance Commission Amendment Act (No. 2) 1983*.

(2) The *Industries Assistance Commission Act 1973*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Subject to sub-section (2), this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(2) Section 13 shall be deemed to have come into operation on 1 July 1983.

Interpretation

3. Section 4 of the Principal Act is amended by omitting "appointed to act" from the definition of "Commissioner" in sub-section (1) and substituting "acting".

Retirement from office

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

"(2) The Minister may, with the consent of the Associate Commissioner, retire an Associate Commissioner from office on the ground of invalidity."

Suspension and removal from office

5. Section 16 of the Principal Act is amended by inserting after sub-section (5) the following sub-section:

"(5A) If a Commissioner or an Associate Commissioner fails, without reasonable excuse, to comply with his obligations under section 20, the Governor-General shall remove that Commissioner or that Associate Commissioner, as the case may be, from office."

6. (1) Section 17 of the Principal Act is repealed and the following section is substituted:

Acting appointments

"17. (1) The Minister may appoint a Commissioner to act as the Chairman—

- (a) during a vacancy in the office of Chairman; or
- (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any other reason (including the reason that the Chairman is suspended from office), unable to perform the duties of his office,

but a Commissioner appointed to act during a vacancy shall not continue so to act for more than 12 months.

"(2) The Minister may appoint a person (including an Associate Commissioner) to act as a Commissioner other than the Chairman—

- (a) when there is a vacancy in the office of that Commissioner, or
- (b) during any period, or during all periods, when that Commissioner is absent from duty or from Australia or is, for any other reason (including the reason that the Commissioner is acting as Chairman or is suspended from office), unable to perform the duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

"(3) While a Commissioner is acting as the Chairman, he has and may exercise all the powers, and shall perform all the functions, of the Chairman.

“(4) While a person is acting as a Commissioner other than the Chairman he has and may exercise all the powers, and shall perform all the functions, of the Commissioner in whose place he is acting.

“(5) An appointment of a person under sub-section (1) or (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(6) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as the Chairman or as a Commissioner other than the Chairman; and
- (b) terminate such an appointment at any time.

“(7) Where—

- (a) a person is acting as the Chairman in accordance with paragraph (1) (b); or
- (b) a person is acting as a Commissioner other than the Chairman in accordance with paragraph (2) (b),

and that office becomes vacant while that person is so acting, then, subject to sub-section (5), that Commissioner may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(8) The appointment of a person to act as the Chairman or as a Commissioner other than the Chairman ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

“(9) The validity of anything done by a person purporting to act under sub-section (1) or (2) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

“(10) For the purposes of this section, there shall be deemed to be 9 offices of Commissioner.”.

(2) Where, immediately before the commencement of this section, a person was acting as the Chairman, or as a Commissioner other than the Chairman, by virtue of an appointment under section 17 of the Principal Act, then, notwithstanding the repeal of that section by this Act, that section continues to apply to and in relation to that person as if that repeal had not been made.

Disclosure of interests

7. (1) Section 20 of the Principal Act is amended by omitting sub-sections (2) and (3) and substituting the following sub-sections:

“(2) Where the Chairman has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his functions

during a proceeding and the Chairman takes part in the proceeding, the interest shall be disclosed in the report resulting from the proceeding.

“(3) Where a Commissioner (other than the Chairman) has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his functions during a proceeding—

- (a) he shall disclose the interest to the Chairman;
- (b) except with the consent of the Chairman, he shall not take part, or continue to take part, in the proceeding; and
- (c) if he takes part, or continues to take part, in the proceeding—the interest shall be disclosed in the report resulting from the proceeding.

“(4) Where the Chairman becomes aware that a Commissioner (other than the Chairman) has, in relation to a proceeding, an interest of the kind referred to in sub-section (3) —

- (a) if the Chairman considers that the Commissioner should not take part, or should not continue to take part, in the proceeding—he shall give a direction to the Commissioner accordingly; or
- (b) in any other case —the interest of the Commissioner shall be disclosed in the report resulting from the proceeding.

“(5) Where a Commissioner (other than the Chairman) or an Associate Commissioner who is, or is to be, a member of a Division of the Commission that is constituted for the purposes of a proceeding has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his functions during the proceeding—

- (a) he shall disclose the interest to the Chairman;
- (b) except with the consent of the Chairman, he shall not take part, or continue to take part, in the proceeding; and
- (c) if he takes part, or continues to take part, in the proceeding—the interest shall be disclosed in the report resulting from the proceeding.

“(6) Where the Chairman becomes aware that a Commissioner (other than the Chairman) or an Associate Commissioner who is, or is to be, a member of a Division of the Commission that is constituted for the purposes of a proceeding has, in relation to that proceeding, an interest of the kind referred to in sub-section (5)--

- (a) if the Chairman considers that the Commissioner or the Associate Commissioner should not take part, or should not continue to take part, in the proceeding—he shall give a direction to the Commissioner or Associate Commissioner, as the case may be, accordingly; or
- (b) in any other case—the interest of the Commissioner or the Associate Commissioner, as the case may be, shall be disclosed in the report resulting from the proceeding.

“(7) A reference in this section to a proceeding is a reference to a proceeding by way of an inquiry by the Commission under this Act.”.

(2) Notwithstanding the amendments made by sub-section (1), sub-sections 20 (2) and (3) of the Principal Act continue to apply, after the commencement of this section, in relation to—

- (a) inquiries by the Commission the holding of which commenced before the commencement of this section; and
- (b) reports by the Commission resulting from inquiries of the kind referred to in paragraph (a),

as if those amendments had not been made.

Reference of matters to Commission

8. Section 23 of the Principal Act is amended—

- (a) by omitting from sub-section (3) “The Minister” (first occurring) and substituting “A Minister”;
- (b) by omitting from sub-section (3) “he has received” and substituting “the Minister administering this Act has received”;
- (c) by omitting from sub-section (3) “the Minister referred” and substituting “the Minister administering this Act referred”;
- (d) by omitting from paragraph (5) (a) “by the Minister for Industry and Commerce under the *Customs Tariff (Anti-Dumping) Act 1975*” and substituting “by the Minister administering the *Customs Tariff (Anti-Dumping) Act 1975* under that Act”; and
- (e) by omitting from paragraph (5) (b) “the Minister for Industry and Commerce” and substituting “the Minister administering the Act under which are imposed the duties of customs or excise to which that Tariff relates”.

Power of Commission to inquire and report on its own initiative

9. Section 24 of the Principal Act is amended by omitting from paragraph (3) (a) “by the Minister for Industry and Commerce under the *Customs Tariff (Anti-Dumping) Act 1975*” and substituting “by the Minister administering the *Customs Tariff (Anti-Dumping) Act 1975* under that Act”.

Temporary Assistance Authority

10. Section 25 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

“(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) a reference in any of those provisions to a Commissioner shall be read as a reference to the full-time member of the Authority; and
- (b) the reference in sub-section 16 (5A) to obligations under section 20 shall be read as a reference to obligations under section 28.”.

11. (1) Section 26 of the Principal Act is repealed and the following section is substituted:

Acting appointment

“26. (1) The Minister may appoint a person (including an associate member of the Authority) to act as the full-time member of the Authority—

- (a) during any vacancy in the office of the full-time member of the Authority; or
- (b) during any period, or during all periods, when the full-time member of the Authority is absent from duty or from Australia or is, for any other reason (including the reason that the full-time member of the Authority is suspended from office), unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) While a person is acting as the full-time member of the Authority, he has and may exercise all the powers, and shall perform all the duties, of the full-time member of the Authority.

“(3) An appointment to act as the full-time member of the Authority may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(4) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as the full-time member of the Authority; and
- (b) terminate such an appointment at any time.

“(5) Where a person is acting as the full-time member of the Authority in accordance with paragraph (1) (b) and the office of the full-time member of the Authority becomes vacant while that person is so acting, then, subject to sub-section (3), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(6) The appointment of a person to act as the full-time member of the Authority ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

“(7) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.”

(2) Where, immediately before the commencement of this section, a person was acting as the full-time member of the Authority by virtue of an appointment under section 26 of the Principal Act, then, notwithstanding the

repeal of that section by this Act, that section continues to apply to and in relation to that person as if that repeal had not been made.

Disclosure of interests

12. (1) Section 28 of the Principal Act is amended by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:

“(2) Where the full-time member of the Authority has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his functions during a proceeding of the Authority and he takes part in the proceeding, the interest shall be disclosed in the report resulting from the proceeding.

“(3) Where an associate member of the Authority who is, or is to be, a member of a Division of the Authority that is constituted for the purposes of a proceeding has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his functions during the proceeding

- (a) he shall disclose the interest to the full-time member of the Authority;
- (b) except with the consent of the full-time member of the Authority, he shall not take part, or continue to take part, in the proceeding; and
- (c) if he takes part, or continues to take part, in the proceeding the interest shall be disclosed in the report resulting from that proceeding.

“(4) Where the full-time member of the Authority becomes aware that an associate member of the Authority who is, or is to be, a member of a Division of the Authority that is constituted for the purposes of a proceeding of the Authority has, in relation to the proceeding, an interest of the kind referred to in sub-section (3) —

- (a) if the full-time member of the Authority considers that the associate member of the Authority should not take part, or should not continue to take part, in the proceeding— he shall give a direction to the associate member accordingly; or
- (b) in any other case—the interest of the associate member of the Authority shall be disclosed in the report resulting from the proceeding.

“(5) In this section—

- (a) a reference to a proceeding is a reference to a proceeding by way of an inquiry by the Authority under this Act; and
- (b) a reference to the full-time member of the Authority includes a reference to a person acting as the full-time member of the Authority by virtue of an appointment under section 26.”.

(2) Notwithstanding the amendments made by sub-section (1), sub-sections 28 (2), (3) and (4) of the Principal Act continue to apply, after the commencement of this section, in relation to—

- (a) inquiries by the Authority the holding of which commenced before the commencement of this section; and

(b) reports by the Authority resulting from inquiries of the kind referred to in paragraph (a),
as if those amendments had not been made.

13. After section 30J of the Principal Act the following section is inserted in Division 2 of Part IV:

Modification of Division in its application to certain industries

“30JA. (1) This section applies to an industry—

- (a) to which temporary assistance is being provided on 1 July 1983; or
- (b) to which temporary assistance commences to be provided during the period of 12 months commencing on that date.

“(2) Upon the cessation of the provision of temporary assistance to an industry to which this section applies, whether that cessation arises by reason of the application to that industry of a provision of this Division having effect by virtue of sub-section (3) or otherwise, that industry shall cease to be an industry to which this section applies subject to any subsequent application to the industry of this section if temporary assistance commences to be provided to the industry during the period referred to in paragraph (1) (b).

“(3) The provisions of this Division have effect in relation to an industry to which this section applies as if—

(a) section 30C were amended—

- (i) omitting ‘commences to be provided to an industry and, during the period of 4 years immediately preceding the date on which the relevant assistance commences’ and substituting ‘commences to be provided to an industry on or after 1 July 1983 and, during the period of 4 years immediately preceding the date on which the relevant assistance commenced’;
- (ii) by omitting ‘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’ and substituting ‘if it appears to the Minister that the relevant 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 relevant assistance commenced to be provided, request the Authority or the Commission to undertake an inquiry in relation to the industry and to report to the Minister whether the relevant assistance should continue to be provided to the industry after the expiration of that period of 12 months’; and
- (iii) by adding at the end thereof the following sub-sections (the existing section 30C becoming sub-section (1))—

‘(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 referred to in sub-section (1) 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 the Authority in relation to that assistance in pursuance of a request by the Minister under sub-section (1).

'(5) Where relevant assistance has been provided to an industry referred to in sub-section (1) for a period of 12 months after the date on which the assistance commenced to be provided, the Minister shall, forthwith after the expiration of that period, refer to the Commission for inquiry and report under section 23 a matter relating to the continuance or withdrawal of assistance to the industry.'

(b) section 30D were amended---

- (i) by inserting in sub-section (1) '(not being an industry referred to in sub-section 30C (1))' after 'industry' (first occurring); and
- (ii) by inserting in sub-section (4) '(not being an industry referred to in sub-section 30C (1))' after 'industry';

(c) section 30E were amended---

- (i) by inserting in sub-section (1) 'or the Authority' after 'Commission';
- (ii) by inserting after sub-section (2) the following sub-section:

'(2A) 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.'
- (iii) by inserting in sub-section (3) 'or the Authority' after 'Commission'; and
- (iv) by adding at the end thereof the following sub-sections:
 - '(4) Where—
 - (a) temporary assistance has been provided to an industry for a period of 2 years 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 3 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 3 years.

‘(5) Where, under sub-section (4), 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.

‘(6) Temporary assistance shall not continue to be provided to an industry after the expiration of the period of 3 years after the date on which the assistance commenced to be provided unless, before the expiration of that period of 3 years, the Minister has received a report of the Commission in relation to the assistance in pursuance of a request by the Minister under sub-section (4).’;

- (d) section 30F were amended—
 - (i) by omitting from sub-section (1) ‘30D’ (first occurring), and substituting ‘30C, 30D or 30E’;
 - (ii) by inserting in sub-section (1) ‘30C,’ after ‘section’ (second occurring); and
 - (iii) by inserting in sub-section (3) ‘30C,’ after ‘section’ (second occurring);
- (e) section 30G were amended by omitting from paragraph (2) (a) ‘forthwith’ and substituting ‘after the expiration of the period of 12 months’;
- (f) section 30H were amended—
 - (i) by inserting in paragraph (a) ‘30C,’ after ‘section’;
 - (ii) by omitting from paragraph (a) ‘the period of 12 months, or the period of 2 years, as the case may be,’ and substituting ‘a period specified in that section’; and
 - (iii) by omitting from paragraph (b) ‘that period of 12 months or 2 years, as the case may be,’ and substituting ‘the period so specified’; and
- (g) section 30J were amended by inserting in sub-section (1) ‘30C,’ after ‘by reason of section’.”

NOTE

1. No. 169, 1973, as amended. For previous amendments, see No. 91, 1976; No. 1, 1978; No. 74, 1981; No. 80, 1982; and No. 21, 1983.