



Industry Commission Act 1989

No. 9 of 1990

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Industry Commission Act 1989

No. 9 of 1990

An Act to establish an Industry Commission for the purpose of holding inquiries into matters relating to industry and for related purposes, to make other provision in connection with industry, to repeal the *Industries Assistance Commission Act 1973* and parts of the *Inter-State Commission Act 1975*, and to make provision for related matters

[Assented to 17 January 1990]

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

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Industry Commission Act 1989*.

Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(3) If a provision referred to in subsection (2) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

Definitions

3. In this Act, unless the contrary intention appears:

“Associate Commissioner” means an Associate Commissioner of the Commission;

“Chairperson” means the Chairperson of the Commission and includes a person who is acting as Chairperson;

“Commission” means the Industry Commission established by this Act, and includes a Division of that Commission performing functions of the Commission;

“Commissioner” means a Commissioner of the Commission and:

(a) includes the Chairperson and a person who is acting as a Commissioner; and

(b) except in sections 28 to 39 (inclusive), includes an Associate Commissioner who is a member of a Division;

“Commonwealth body” means:

(a) a body (whether incorporated or not) established for a public purpose by or under a law of the Commonwealth or of a Territory; or

(b) a company in which the Commonwealth, a Territory, or a body so established, holds a controlling interest;

“Division” means a Division of the Commission constituted under section 41;

“duties” means duties of customs, other than duties to which the *Customs Tariff (Anti-Dumping) Act 1975* applies;

“hearing” means a hearing held for the purposes of an inquiry;

“industry” means industry of any kind (including any business or activity relating to goods or services), and a reference to industry is a reference to industry in general, a particular industry, a part of an industry, or a group or groups of particular industries;

“inquiry” means an inquiry held under this Act;

“subject of Commonwealth power” means any matter with respect to which the Parliament has power to make laws, including, in particular, any of the following:

(a) grants of financial assistance made, or to be made, by the Commonwealth to the States;

(b) trade and commerce:

(i) with other countries; or

(ii) among the States; or

(iii) between a State and a Territory;

- (c) bounties to which paragraph 51 (iii) of the Constitution is applicable;
- (d) banking to which paragraph 51 (xiii) of the Constitution is applicable;
- (e) insurance to which paragraph 51 (xiv) of the Constitution is applicable;
- (f) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;
- (g) appropriations for the purposes of the Commonwealth, within the meaning of section 81 of the Constitution;
- (h) the government of a Territory.

Act binds Crown

4. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory, but the Crown is not liable to prosecution for an offence against this Act.

PART 2—ESTABLISHMENT AND FUNCTIONS OF INDUSTRY COMMISSION

Establishment of Commission

5. An Industry Commission is established.

Functions of Commission

6. (1) The functions of the Commission are:

- (a) to hold inquiries and make reports to the Minister in respect of such matters relating to industry as are referred to it by the Minister; and
- (b) to do anything incidental to those functions.

(2) In subsection (1):

“matters relating to industry” include legislative or administrative action taken, or to be taken, by the Commonwealth or a State or Territory in relation to industry.

Reference of matters to Commission

7. (1) In referring a matter to the Commission for inquiry and report, the Minister may do any or all of the following:

- (a) specify a period within which the report is to be submitted to the Minister;
- (b) require the Commission to make a draft report available to the public during the inquiry;
- (c) require the Commission to report on courses of action that the Commission considers to exist in relation to the matter;

and the Commission must act accordingly.

(2) Where the Minister has referred a matter to the Commission for inquiry and report, the Minister may withdraw or amend the reference at any time before the Minister has received the report from the Commission.

(3) Where a matter is referred to the Commission, the Commission may also inquire into and make recommendations, in the report, on any matters it considers relevant to the matter referred.

General policy guidelines for Commission

8. (1) In the performance of its functions, the Commission must have regard to the desire of the Commonwealth Government:

- (a) to encourage the development and growth of Australian industries that are efficient in their use of resources, self-reliant, enterprising, innovative and internationally competitive; and
- (b) to facilitate adjustment to structural changes in the economy and to ease social and economic hardships arising from those changes; and
- (c) to reduce regulation of industry (including regulation by the States and Territories) where this is consistent with the social and economic goals of the Commonwealth Government; and
- (d) to recognise the interests of industries, consumers, and the community, likely to be affected by measures proposed by the Commission.

(2) In the performance of its functions, the Commission must also have regard to any other matters notified to it in writing by the Minister.

(3) This section does not apply to a question whether a Commercial Tariff Concession Order should have been made or revoked, being a question arising from a request made under subsection 269R (1) or (2) of the *Customs Act 1901*.

(4) Where a matter is referred to the Commission for inquiry and report, the Commission must also inquire into, and, in the same report, report on, the social and environmental consequences of any recommendations it makes.

Reports to be tabled

9. (1) Subject to subsection (2), where the Minister receives a report as the result of an inquiry, the Minister must cause a copy of the report to be laid before each House of the Parliament within 25 sitting days of that House after the day on which the Minister receives the report.

(2) If the Commission recommends that the tabling of the report, or part of the report, be delayed for a specified period, subsection (1) applies to the report, or that part of the report, as if the report was received by the Minister at the end of that period.

PART 3—ACTION BY COMMONWEALTH MINISTERS RELATING TO INDUSTRY

Ministers not to take certain action relating to industry

10. (1) A Minister of State of the Commonwealth or a delegate of such a Minister must not take any action referred to in section 11 unless the action is taken within 12 months after the Minister administering this Act has received, or last received, as the case requires, a report of the Commission in relation to the matter.

(2) Where the Minister administering this Act:

- (a)** has, under subsection 7 (1), specified a period (in this subsection called the “**first period**”) within which the Commission is to report on a matter; and
- (b)** at the end of the period (in this subsection called the “**second period**”) of 30 days after the end of the first period, has not received a report of the Commission in relation to the matter;

the Minister is to be treated, for the purposes of subsection (1):

- (c)** as having received such a report at the end of the second period; and
- (d)** if the Minister later receives such a report—as having received it at the end of the second period.

Actions subject to section 10 restrictions

11. (1) Except as provided in section 12, section 10 applies to action in respect of any of the following matters:

- (a)** the imposition, removal, increase or reduction of duties on goods imported into Australia;
- (b)** the prohibition or restriction of the importation of goods into Australia;
- (c)** the removal of a prohibition, or the extension, reduction or removal of a restriction, of the importation of goods into Australia;
- (d)** the provision of financial assistance for over 2 years by the Commonwealth Government to an industry, whether or not any financial assistance has been previously provided by that Government to the industry;
- (e)** the provision of financial assistance for up to 2 years by the Commonwealth Government to an industry to which financial assistance has previously been provided by the Government, where:
 - (i)** the previous financial assistance was provided for a period, or an aggregate period, of not less than 2 years; or
 - (ii)** the previous financial assistance was provided for a period, or an aggregate period, that together with the period of proposed further financial assistance exceeds 2 years;
- (f)** the suspension, withdrawal, increase or reduction of financial

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assistance that has been provided by the Commonwealth Government to an industry for over 2 years.

- (2) For the purposes of paragraph (1) (e):
- (a) financial assistance that has been previously provided must be disregarded if it was provided after inquiry and report by the Commission; and
 - (b) so much of any period during which financial assistance was previously provided must be disregarded if it occurred more than 6 years before the beginning of the period of proposed further financial assistance.
- (3) In this section:
- “financial assistance”** means assistance by payments of money to persons engaged in the industry concerned, but does not include assistance by such payments where equivalent amounts of money have been raised by a tax imposed on the industry for the purpose of providing the assistance;
- “industry”** means an industry of any kind (including any business relating to goods or services), and a reference to an industry includes a reference to a part of an industry or a group or groups of particular industries.

Actions exempt from section 10

12. (1) Section 10 does not apply to action in respect of the imposition, removal, increase or reduction of duties on goods imported into Australia, if:

- (a) the action is necessary:
 - (i) to correct anomalies, errors or ambiguities in the *Customs Tariff Act 1987*; or
 - (ii) to correct an error in the implementation of a decision of the Commonwealth Government in respect of the matter in respect of which the action is taken; and
 - (b) the Minister administering this Act approves the action in writing.
- (2) Where:
- (a) as a result of a decision of the Commonwealth Government arising from a report by the Commission, duty is imposed on goods of a particular description imported into Australia; and
 - (b) as a result of a decision of a court or tribunal, the rate of duty applying to those goods differs from the rate at which the duty was being collected in respect of those goods immediately before the decision of the court or tribunal; and
 - (c) a Minister is satisfied that it is necessary to take action to give effect to the decision of the Commonwealth Government; and
 - (d) the Minister administering this Act gives written approval of the action;

section 10 does not prevent the Minister referred to in paragraph (c) from taking the action to alter the rate of duty to the rate at which it was being collected immediately before the decision of the court or tribunal.

(3) Section 10 does not apply to action to provide assistance to an industry in accordance with, or for the purposes of, Part XVA of the *Customs Act 1901*.

(4) Section 10 does not apply in respect of changes in duties that are only made to match corresponding changes in excise duties.

(5) Section 10 does not apply to the payment of money to a Commonwealth corporation that is engaged in an industry, except to the extent that the money is applied by the corporation in providing financial assistance to other persons engaged in that industry.

(6) Section 10 does not apply to:

- (a) an action to initiate an Act (other than the introduction into the House of Representatives of a Customs Tariff Proposal or the publication of a notice under section 273EA of the *Customs Act 1901*); or
- (b) the making of a by-law under the *Customs Act 1901* or a determination under section 273 of that Act; or
- (c) the imposition, removal, increase or reduction of a tax (other than duties).

(7) Section 10 does not apply to action that is necessary to carry out the policy of the Commonwealth Government:

- (a) in relation to, or in relation to negotiations for, bilateral or multilateral trade agreements; or
- (b) in relation to tariff preferences for developing countries.

(8) In this section:

“**Commonwealth corporation**” means a corporation established for a public purpose:

- (a) by a law of the Commonwealth; or
- (b) by the Commonwealth;

“**multilateral trade agreements**” includes the International Convention on the Harmonized Commodity Description and Coding System, as amended from time to time, being the convention that was established under the auspices of the Customs Co-operation Council and came into force on 1 January 1988.

PART 4—CONDUCT OF INQUIRIES

General conduct of inquiries

13. In an inquiry, the Commission:

- (a) is not bound to act formally; and

- (b) is not bound by the rules of evidence; and
- (c) may inform itself on any matter in any way it thinks fit; and
- (d) may receive information or submissions in the form of oral or written statements; and
- (e) may consult with such persons as it thinks fit.

Notice of inquiries

14. As soon as practicable after the Commission receives a reference to hold an inquiry, it must give reasonable notice in each State and internal Territory, by advertisement published in a newspaper circulating in the State or Territory, of its intention to hold the inquiry.

Notice to person to furnish information and documents

15. (1) Where the Commission:

- (a) is holding an inquiry; and
- (b) has reason to believe that a person is capable of giving information or producing documents relevant to the inquiry;

the Chairperson, or a Commissioner nominated to preside at a meeting of a Division of the Commission constituted for the purposes of the inquiry, may, by notice in writing served on the person, require the person to send to the Commission, on or before a day specified in the notice:

- (c) a statement, signed by the person, setting out such information as is so specified; and
- (d) such documents as are so specified.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a notice served under subsection (1).

Penalty: Imprisonment for 6 months or the corresponding fine fixed by section 4B of the *Crimes Act 1914*.

(3) It is a reasonable excuse for the purposes of subsection (2) that to send the statement or document to the Commission might tend to incriminate the person or make the person liable to forfeiture or a penalty.

Power to hold hearings

16. (1) The Commission must hold hearings for the purposes of an inquiry.

(2) The Commission may hold public seminars, conduct workshops and establish working groups and task forces for the purposes of an inquiry.

(3) Before the Commission begins to hold hearings for the purposes of an inquiry, it must give reasonable notice in each State and internal Territory, by advertisement published in a newspaper circulating in the State or Territory, of its intention to hold the hearings, the subject of the hearings and the time and place at which the first of the hearings is to be begun.

(4) Sections 40 and 41 apply to a hearing, so far as those sections are capable of so applying, as if the hearing were a meeting of the Commission.

Procedure at hearings

17. (1) Subject to subsection (2), a hearing must be held in public.

(2) If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, it may:

- (a) direct that a hearing or a part of a hearing is to take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the hearing or of matters contained in documents given to the Commission.

(3) A person must not contravene a direction given under paragraph (2) (b).

Penalty: Imprisonment for 6 months or the corresponding fine fixed by section 4B of the *Crimes Act 1914*.

Summons to person to attend hearing

18. (1) The Chairperson, or the Commissioner nominated to preside at the hearing concerned, may summon a person in writing to appear at a hearing to give evidence and to produce such documents as are specified in the summons.

(2) Where a person has been served with a summons to appear at a hearing, the Chairperson, or the Commissioner nominated to preside at the hearing, may, at any time before the person has so appeared, direct the person in writing to send to the Commission, on or before a day specified in the direction:

- (a) a statement, signed by the person, setting out such information as is so specified; and
- (b) such documents as are specified in the summons;

and, if such a direction is served on the person, a prosecution for an offence against section 19 or 20 must not be brought against the person in relation to the summons.

(3) A person must not, without reasonable excuse, refuse or fail to comply with a direction under subsection (2).

Penalty: Imprisonment for 6 months or the corresponding fine fixed by section 4B of the *Crimes Act 1914*.

(4) It is a reasonable excuse for the purposes of subsection (3) that to send a statement or document to the Commission might tend to incriminate the person or make the person liable to forfeiture or a penalty.

Failure of person summoned to attend

19. A person served with a summons under subsection 18 (1) to appear at a hearing must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or

- (b) fail to attend from day to day unless excused, or released from further attendance, by the Commissioner presiding at the hearing.

Penalty: Imprisonment for 6 months or the corresponding fine fixed by section 4B of the *Crimes Act 1914*.

Refusal to answer questions or produce documents

20. (1) A person appearing as a witness at a hearing must not, without reasonable excuse:

- (a) refuse or fail to answer a question that the person is required to answer by the Commissioner presiding at the hearing; or
- (b) refuse or fail to produce a document that the person was required to produce by a summons under subsection 18 (1) served on the person.

Penalty: Imprisonment for 6 months or the corresponding fine fixed by section 4B of the *Crimes Act 1914*.

(2) It is a reasonable excuse for the purposes of subsection (1) that the answer or the production of the document might tend to incriminate the person or make the person liable to forfeiture or a penalty.

False or misleading evidence or information

21. (1) A person must not:

- (a) give to the Commission, whether orally or in writing, information that the person knows to be false or misleading in a material particular; or
- (b) at a hearing before the Commission, give evidence that the person knows to be false or misleading in a material particular; or
- (c) send to the Commission, under section 15 or 18, a statement or document containing matter that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 6 months or the corresponding fine fixed by section 4B of the *Crimes Act 1914*.

(2) Subsection (1) does not apply to a statement or document if, when the person sends or gives it to the Commission or produces it at a hearing, the person informs the Commission that it is false or misleading in a material particular and specifies where it is, to the person's knowledge, false or misleading.

Contempt of Commission

22. A person must not:

- (a) hinder, obstruct, molest or interfere with a Commissioner in the exercise of powers or the performance of functions or duties as a Commissioner; or
- (b) create a disturbance, or take part in creating or continuing a disturbance, in a place where the Commission is holding a hearing;
or

- (c) do anything else that would, if the Commission were a court of record, constitute a contempt in the face of that court.

Penalty: Imprisonment for 6 months or the corresponding fine fixed by section 4B of the *Crimes Act 1914*.

Powers of Commission in relation to documents produced

23. Where documents are produced or given to the Commission under this Part, the Commission:

- (a) may take possession of, and make copies of or take extracts from, the documents; and
- (b) may keep possession of the documents for such period as is necessary for the purposes of the inquiry to which they relate; and
- (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Commission.

Written statements and submissions to be made public

24. Where:

- (a) the Commission receives information, or a submission, in the form of a written statement; or
- (b) under section 15 or 18, a person sends a statement to the Commission; or
- (c) evidence is given at a hearing by the tendering of a signed statement; or
- (d) a document is given or sent to the Commission in connection with an inquiry, or is produced at a hearing;

the Commission must make available to the public in any way it thinks fit the contents of the statement or document, other than any matter:

- (e) that the person from whom the statement or document was received objects to being made public; and
- (f) the evidence of which the Commission is satisfied would have been taken in private if that evidence had been given orally at a hearing and the person giving that evidence had objected to giving it in public.

Allowances to witnesses

25. A person who attends at a hearing under a summons served under section 18 is entitled to be paid by the Commonwealth such allowances and expenses as are prescribed.

Person prejudiced in employment because of assisting Commission

26. (1) A person must not:

- (a) refuse to employ another person; or
- (b) dismiss, or threaten to dismiss, another person from his or her employment; or

- (c) prejudice, or threaten to prejudice, another person in his or her employment; or
- (d) intimidate or coerce, impose any pecuniary or other penalty on, or take any other disciplinary action in relation to, another person;

for the reason, or for reasons that include the reason:

- (e) that the other person has given, or proposes to give, information or documents to the Commission in connection with an inquiry; or
- (f) has given, or proposes to give, evidence at a hearing held for the purposes of an inquiry; or
- (g) has produced, or proposes to produce, documents at a hearing held for the purposes of an inquiry; or
- (h) has sent, or proposes to send, to the Commission a statement or documents under section 15 or 18 in connection with an inquiry.

Penalty: Imprisonment for 6 months or the corresponding fine fixed by section 4B of the *Crimes Act 1914*.

(2) In any proceedings for an offence against subsection (1), if it is established that an action of a kind referred to in any of paragraphs (1) (a) to (d) (inclusive) took place, the burden lies on the defendant of establishing that the action was not done for a reason referred to in any of paragraphs (1) (e) to (h) (inclusive).

Limitation of powers under this Part

27. (1) The powers of the Commission under section 15, subsection 17 (2), section 18, paragraph 20 (1) (a) and section 23 may be exercised only as provided in this section.

- (2) The powers may be exercised in relation to:
 - (a) a person holding, or performing the duties of, an office or appointment under a law of the Commonwealth or of a Territory; or
 - (b) a Commonwealth body.

(3) The powers may also be exercised in relation to any person for the purposes of an inquiry, to the extent that the subject-matter of the inquiry relates to a subject of Commonwealth power.

(4) Section (3) does not enable a power to be exercised to the extent that it would impair the capacity of a State to execute its constitutional powers.

PART 5—CONSTITUTION OF COMMISSION

Constitution of Commission

- 28. (1) The Commission consists of:
 - (a) a Chairperson; and
 - (b) not fewer than 4 nor more than 8 other Commissioners.

(2) At least one of the Commissioners must be a person who has knowledge of, and at least 3 years experience, in an employed or voluntary capacity, in, environmental matters.

(3) The exercise of the powers and the performance of the functions of the Commission are not affected merely because of:

(a) a vacancy in the office of Chairperson; or

(b) the number of Commissioners falling below 5 for a period of not more than 3 months.

Terms of appointment

29. (1) The Commissioners are to be appointed by the Governor-General on a full-time basis.

(2) A Commissioner is to be appointed for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(3) A Commissioner holds office on such terms (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

Outside employment

30. Except with the consent of the Minister, a Commissioner must not engage in paid employment outside the duties of his or her office.

Associate Commissioners

31. (1) The Minister, after consultation with the Chairperson, may appoint persons to be Associate Commissioners.

(2) An Associate Commissioner is to be appointed for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(3) An Associate Commissioner may be appointed on a full-time or part-time basis.

(4) Subject to this Part, an Associate Commissioner holds office on such terms and conditions as the Minister determines.

(5) An Associate Commissioner has the powers, and is to perform the functions and duties, of a Commissioner in relation to an inquiry and report by a Division of the Commission of which he or she is a member.

Executive Commissioner

32. (1) The Chairperson may appoint one of the Commissioners to be the Executive Commissioner.

(2) The Executive Commissioner must assist the Chairperson in the exercise of the powers and the performance of the functions of the Chairperson.

Remuneration and allowances

33. (1) A Commissioner or an Associate Commissioner is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, is to be paid such remuneration as is prescribed.

(2) A Commissioner or an Associate Commissioner is to be paid such allowances as are prescribed.

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

Leave of absence

34. (1) The Minister may grant to a Commissioner, or to a full-time Associate Commissioner, leave of absence on such terms as to remuneration and otherwise as the Minister determines.

(2) The Minister may, by written instrument, delegate to the Chairperson the Minister's powers under subsection (1) (other than powers in relation to the Chairperson).

Acting appointments

35. (1) The Minister may appoint a Commissioner to act as the Chairperson:

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

(2) The Minister may appoint a person (including an Associate Commissioner) to act as a Commissioner other than the Chairperson:

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

(3) A person appointed to act during a vacancy must not continue so to act for more than 12 months.

(4) For the purposes of subsection (2), the Commission is to be treated as having 8 offices of Commissioner other than the Chairperson.

(5) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in or in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Resignation

36. (1) A Commissioner may resign by written instrument delivered to the Governor-General.

(2) An Associate Commissioner may resign by written instrument delivered to the Minister.

Retirement

37. (1) The Governor-General may, with the consent of the Commissioner, retire a Commissioner on the ground of invalidity.

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

Suspension and removal from office

38. (1) The Governor-General may suspend a Commissioner or an Associate Commissioner from office for proved misbehaviour or physical or mental incapacity.

(2) If the Governor-General does so, the Minister is to cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.

(3) Where the statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Commissioner or Associate Commissioner should be restored to office and, if each House so passes a resolution, the Governor-General is to terminate the suspension.

(4) If, at the end of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may remove the Commissioner or Associate Commissioner from office.

(5) If:

(a) a Commissioner or Associate Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

(b) a Commissioner:

(i) engages, except with the consent of the Minister, in paid employment outside the duties of his or her office; or

(ii) is absent from duty, except on leave of absence granted under this Part, for 14 consecutive days or for 28 days in any 12 months; or

(c) an Associate Commissioner engages in paid employment that, in the opinion of the Minister, conflicts with the proper performance of his or her duties; or

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(d) a Commissioner or Associate Commissioner fails, without reasonable excuse, to comply with section 42;
the Governor-General may remove the Commissioner or Associate Commissioner from office.

(6) Where a Commissioner or Associate Commissioner who is an eligible employee for the purposes of the *Superannuation Act 1976* is removed from office under subsection (4) on the ground of physical or mental incapacity, he or she is to be treated, for the purposes of that Act, as having been retired on the ground of invalidity on the day on which he or she was suspended from office.

(7) A Commissioner or Associate Commissioner who is suspended from office under this section is not entitled to be paid any remuneration or allowances in respect of the period of suspension unless he or she is restored to office.

(8) A Commissioner or Associate Commissioner is not to be removed from office except as provided by this section.

Delegation by Chairperson

39. The Chairperson may, by written instrument, delegate any of his or her powers and functions under this Act:

- (a) to a Commissioner; or
- (b) to an Associate Commissioner for the purposes of an inquiry and report to be made by a Division of the Commission of which the Associate Commissioner is a member.

Meetings of Commission

40. (1) The Chairperson is to convene such meetings of the Commission as he or she thinks necessary for the efficient performance of the functions of the Commission.

- (2) Meetings are to be held at such places as the Chairperson determines.
- (3) The Chairperson must preside at all meetings.
- (4) The Chairperson may give directions regarding the procedure to be followed at or in connection with a meeting.
- (5) At a meeting:
 - (a) the Chairperson and 3 other Commissioners form a quorum; and
 - (b) questions must be decided by a majority of votes of the Commissioners present and voting; and
 - (c) the Chairperson has a deliberative vote and, if necessary, also has a casting vote.

(6) The Chairperson may permit a person to participate in, or a Commissioner to form part of a quorum at, a meeting by means of telephone, closed circuit television or any other method of communication.

(7) A power of the Chairperson under subsection (1), (2), (4) or (6) must be exercised, so far as practicable, only after consultation with the Commissioners.

(8) This section has effect subject to section 41.

Chairperson may authorise Commission to sit in Divisions

41. (1) For the purposes of a particular inquiry and report, the Chairperson may, by written instrument, determine that the powers of the Commission under this Act may be exercised by a Division constituted by the Chairperson and the other Commissioner or Commissioners specified in the determination.

(2) Where the Chairperson has made such a determination, he or she may, by written instrument, at any time before the Division has completed the inquiry and report, amend the determination in any respect, and, if the constitution of the Division is changed, the Division as constituted after the change may complete the inquiry and report.

(3) For the purposes of an inquiry and report specified in a determination under subsection (1), the Commission is to be taken to consist of the Division specified in the determination.

(4) The Chairperson is not required to attend a meeting of a Division if he or she does not think fit to do so and, in that case, subsection 40 (3) does not apply.

(5) At a meeting of a Division at which the Chairperson is not present, a Commissioner nominated for the purpose by the Chairperson must preside.

(6) At a meeting of a Division constituted by 3 or more Commissioners, 2 Commissioners form a quorum.

(7) Two or more Divisions may at any time meet and exercise powers of the Commission under this Act.

Disclosure of interests

42. (1) The Chairperson must give written notice to the Minister of all direct and indirect pecuniary interests that he or she has or acquires in a business or in a body corporate carrying on a business.

(2) Where the Chairperson has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions during an inquiry and the Chairperson takes part in the inquiry, the interest must be disclosed in the report resulting from the inquiry.

(3) Where a Commissioner (other than the Chairperson) has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions during an inquiry:

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

(4) Where the Chairperson becomes aware that a Commissioner (other than the Chairperson) has, in relation to an inquiry, an interest of a kind referred to in subsection (3):

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

PART 6—MISCELLANEOUS

Staff

43. (1) Subject to subsection (2), the staff required to assist the Commission in the performance of its functions are to be persons appointed or employed under the *Public Service Act 1922*.

(2) The Chairperson may engage other persons to provide services for the Commission.

(3) The Chairperson has all the powers of a Secretary under the *Public Service Act 1922* so far as they relate to the branch of the Australian Public Service comprising the staff of the Commission.

Protection of Commissioners and witnesses

44. (1) A Commissioner has, in the performance of duties under this Act, the same protection and immunity as a Justice of the High Court.

(2) A person appearing as a witness at a hearing has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

(3) A person appearing at a hearing on behalf of another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(4) Where a person, for the purposes of this Act, sends a statement or document to the Commission, subsection (2) applies to the person as if the

person appeared as a witness at a hearing and produced that statement or document at the hearing.

Annual report

45. (1) The Commission must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report (in this section called an “**annual report**”) on the operations of the Commission during the year that ended on that day.

(2) In an annual report, the Commission must, so far as practicable, also report on:

- (a) the economic performance of industry and the principal factors affecting that performance; and
- (b) assistance and regulations affecting industry, matters referred to in paragraphs 11 (1) (a), (b) and (c), and the effect of such assistance, regulations and matters on industry and the Australian economy generally.

(3) The Minister must cause a copy of an annual 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.

(4) In this section:

“**assistance**” includes any act that, directly or indirectly, assists a person to carry on a business or activity or confers a pecuniary benefit on, or results in a pecuniary benefit accruing to, a person in respect of carrying on a business or activity.

Conduct by directors, servants and agents

46. (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and

(b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless he or she establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where:

(a) a person other than a body corporate is convicted of an offence; and

(b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Regulations

47. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

PART 7—REPEALS AND TRANSITIONAL PROVISIONS

Division 1—Repeals

Repeals

48. (1) The *Industries Assistance Commission Act 1973* is repealed.

(2) The provisions of the *Inter-State Commission Act 1975* (other than Part II, sections 19, 20 and 24 and subsection 30 (1)) are repealed.

(3) Subject to subsection (4), the Governor-General may, by Proclamation, repeal Part II, sections 19, 20 and 24 and subsection 30 (1) of the *Inter-State Commission Act 1975*.

(4) A Proclamation must not be made under subsection (3) at any time when a person holds office as a member of the Inter-State Commission.

Division 2—Transitional Provisions

Definitions

49. In this Division, unless the contrary intention appears:
- “commencement” means the commencement of this Part;
 - “IAC” means the Industries Assistance Commission;
 - “IAC Act” means the *Industries Assistance Commission Act 1973*;
 - “ISC” means the Inter-State Commission;
 - “ISC Act” means the *Inter-State Commission Act 1975*.

Staff

50. A person who, immediately before the commencement, was a member of the staff of the IAC or the ISC is to be treated after the commencement as a member of the staff of the Commission.

Appropriations

51. (1) Where an Appropriation Act has appropriated, or appropriates, money for the purposes of the IAC or the ISC, the Act is to be treated as having appropriated, or as appropriating, the money for the purposes of the Commission.

(2) Subsection (1) does not apply to money that has been spent before the commencement or money appropriated under section 19 of the ISC Act.

Commissioners—members of the ISC

52. (1) This section has effect in spite of Part 5.

(2) Where a person appointed as a Commissioner was a member of the ISC immediately before the commencement, then, until the end of the period for which the person was appointed as a member of the ISC:

- (a) the remuneration and allowances to which the person is entitled as a Commissioner are to be not less than the remuneration and allowances applicable from time to time to the office of a member of the ISC; and
- (b) the terms of appointment of the person as a Commissioner are to be not less favourable than the terms applicable from time to time to the office of a member of the ISC; and
- (c) the person may be removed from office as a Commissioner by the Governor-General on an address from both Houses of the Parliament in the same session praying for the removal on the ground of proved misbehaviour or incapacity, but the person is not to be removed otherwise.

(3) If section 19 of the ISC Act is repealed before the end of the period referred to in subsection (2), that subsection applies as if that section had not been repealed.

Commissioners—members of the IAC

53. (1) This section has effect in spite of Part 5.

(2) Where a person appointed as a Commissioner was a member of the IAC immediately before the commencement, then, until the end of the period for which the person was appointed as a member of the IAC:

- (a)** the remuneration and allowances to which the person is entitled as a Commissioner are to be not less than the remuneration and allowances that would have been applicable from time to time to the office of a member of the IAC if the IAC Act had not been repealed; and
- (b)** the terms of appointment of the person as a Commissioner are to be not less favourable than the terms that would have been applicable from time to time to the office of a member of the IAC if the IAC Act had not been repealed.

(3) In this section:

“member”, in relation to the IAC, means a Commissioner within the meaning of the IAC Act.

Inquiries by IAC

54. (1) Where an inquiry or a report under the IAC Act had been begun but had not been completed before the commencement, it may be completed by the Commission as if it had been begun under this Act.

(2) Where an inquiry had been completed under the IAC Act but a report had not been begun in respect of the inquiry, the Commission may make the report as if the inquiry had been held under this Act.

Records of IAC and ISC

55. (1) Records of the IAC and the ISC become records of the Commission, and any information or documents that were treated as confidential by the IAC or the ISC must be treated as confidential by the Commission until the Commission determines, with the consent of the person who supplied the information or documents, that the circumstances that originally required their confidentiality no longer apply.

(2) Where a direction given by the ISC under paragraph 12 (2) (b) of the ISC Act was in effect immediately before the commencement, it has effect after the commencement as if it were a direction given by the Commission under paragraph 17 (2) (b) of this Act.

Protection of witnesses

56. A person who gave evidence, made a statement or produced a document in a hearing before the IAC or an investigation by the ISC is entitled to the same protection as if the person had done so in a hearing before the Commission.

References to Tariff Board and IAC

57. A reference in a law of the Commonwealth to the Tariff Board or to the IAC is to be read as a reference to the Commission, except in relation to a report made by the Tariff Board or the IAC before the commencement.

*[Minister's second reading speech made in—
House of Representatives on 21 November 1989
Senate on 5 December 1989]*