

1984

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INDUSTRIES ASSISTANCE COMMISSION AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Industry and  
Commerce, Senator the Honourable John N. Button)



## OUTLINE

This Bill proposes to amend the Industries Assistance Commission Act 1973 as a consequence of an independent review of the functions and operations of the Industries Assistance Commission (IAC) conducted by Mr J Uhrig.

The major amendments in the Bill, which propose to implement most of the legislative changes recommended in the Uhrig Report on Review of the Industries Assistance Commission are:

- (i) a new definition of "industry" to make it clear that the IAC may inquire into tertiary and service industries (clause 4);
- (ii) provision to appoint Associate Commissioners on a full or part-time basis to be available for a particular inquiry or inquiries by the IAC (clause 6);
- (iii) A simplification of the IAC policy guidelines in section 22 of the Principal Act so as to reflect widely supported industry policy objectives. The new guidelines will require the IAC to have regard to the desire of the Government to facilitate adjustment and encourage the growth of efficient, export-oriented and internationally competitive industries while recognising the interests of other industries and consumers (clause 11);
- (iv) a provision to enable the Government to revise its decisions on assistance to industry within a period of 12 months from the receipt of an IAC report (clause 12);
- (v) a provision to require the IAC to provide options in its report to the Minister, including the IAC's recommended option (clause 13);
- (vi) the abolition of the IAC's power to initiate inquiries (clause 13);
- (vii) provisions to abolish the Temporary Assistance Authority and introduce new policy guidelines relating to inquiries for temporary assistance (clauses 14 and 17);
- (viii) a provision for temporary assistance to be limited to 12 months (clause 21); and
- (ix) provisions to dispense with public hearings prior to the publication of IAC draft reports, and to allow evidence at public hearings following the publication of draft reports to be submitted in writing (clauses 23 and 24).

## FINANCIAL IMPACT STATEMENT

The provisions in this Bill have no direct financial implications.



## NOTES ON CLAUSES

Short Title and Commencement

- Clause 1 is a formal machinery clause.
- Clause 2 provides for the Act to come into operation on the day on which it receives the Royal Assent.

Tariff Board

- Clause 3 amends Section 3 of the Principal Act by:
- . omitting sub-sections (1), (3), (4), (5) and (6), relating to some transitional provisions dealing with the former Tariff Board, which are no longer necessary.

Interpretation

- Clause 4 Sub-clause (1) amends Section 4 of the Principal Act by;
- . omitting the definitions of "Authority" and "full time member of the Authority", which is consequent upon the abolition of the Temporary Assistance Authority;
  - . adding a definition of "hearing", which is relevant to the new procedures for the conduct of inquiries by the Commission under Part V of the Act;
  - . amending the definition of "industry" to expressly provide that that term means a primary, secondary or tertiary industry. This amendment, together with the new definition of "tertiary industry", which is expressed to specifically include a service industry, is proposed to put beyond doubt the position concerning the Government's ability to refer matters to the Commission in respect of tertiary or service industries;
  - . omitting the definition of "meeting", which has been superseded by the new procedures for the conduct of inquiries by the Commission under Part V of the Act, and adding a definition for "inquiry", which is relevant to that Part.

Establishment of Commission

- Clause 5 amends Section 5 of the Principal Act to add the condition that persons appointed to the Commission as Commissioners must be appointed on a full-time basis.

Associate Commissioners

Clause 6 Sub-clause(1) amends Section 8 of the Principal Act by;

- . omitting sub-section(2) and substituting new sub-sections which;
- clarify that Associate Commissioners may be appointed on a full-time or part-time basis up to a period of 5 years. The ability to appoint on a part-time basis is intended to facilitate the creation of a pool of Associate Commissioners, to be drawn upon as and when the need arises (proposed sub-sections (2) and (2A)).

Sub-clauses (2), (3) and (4) are technical drafting provisions which effectively preserve the appointment and the period of appointment of current Associate Commissioners.

Leave of Absence

Clause 7 effects a technical drafting change to sub-section 13(1) of the Principal Act.

Chairman may authorize Commission to sit in Divisions

Clause 8 amends section 19 of the Principal Act by;

- . effecting technical drafting changes to sub-sections 19(1) and 19(4); and
- . omitting sub-section 19(3), which is consequent upon the proposed amendment to sub-section 8(2) of the Principal Act (relating to Associate Commissioners).

Heading to Part III

Clause 9 is a technical drafting provision.

Functions of Commission under Part III

Clause 10 effects several technical drafting changes to Section 21 of the Principal Act.

General policy guidelines for Commission

Clause 11 Sub-clause(1) amends Section 22 of the Principal Act by;

- . omitting sub-section (1) and substituting a new sub-section that sets out the general policy guidelines which are to govern the Commission in its consideration of references (except a reference for

temporary assistance) for industry assistance. The new guidelines have been simplified, and are cast in terms of;

- encouraging the development and growth of efficient Australian industries which are internationally competitive, export-oriented and capable of operating over the long term with minimum levels of Government support (proposed paragraph 1(a)),
- facilitating the adjustment by industries to structural changes (proposed paragraph 1(b)),  
and
- recognizing the interests of other industries and consumers likely to be affected by measures proposed by the Commission (proposed paragraph 1(c)),

- . amending sub-section (4A) to effect a technical drafting change;
- . omitting sub-section (5), which is consequent upon the abolition of the Temporary Assistance Authority.

Sub-clauses (2) and (3) introduce the transitional arrangements for Section 22 as follows;

- . for references sent to the Commission after 7 June 1984 under Section 23 (a reference for long-term assistance as opposed to temporary assistance) or Section 30C (a reference for long-term assistance following extended temporary assistance) the new policy guidelines for Section 22 apply (proposed sub-clause 2). The date of 7 June 1984 refers to the day on which the Government announced its intentions to amend the Industries Assistance Commission Act 1973 as part of its decisions on the Review of the Industries Assistance Commission;
- . for references sent to the Commission before 7 June 1984 under Section 23 or Section 30C, the guidelines currently in the Act apply (proposed sub-clause (3)), subject to the Minister's discretion to request the Commission to have regard to other matters, and give priority to them under existing sub-sections 22(2) and (3)).

Reference of matters to Commission

Clause 12

Sub-clause (1) amends section 23 of the Principal Act by;

- . omitting sub-section (3) and substituting three new sub-sections, which amplify and clarify the Minister's power to take action on reports of the Commission relating to the provision of assistance to a particular industry or a particular group or groups of industries;
- Action may only be taken in respect of the matters nominated in sub-section 23(4) where,
  - .. such action is necessary to implement the policy of the Government in relation to bilateral or multilateral trade agreements (or negotiations for such agreements), or in relation to tariff preferences for developing countries (proposed paragraph 3(a) which is a redraft of existing paragraphs 3(a) and (b)), or
  - .. a period of not more than 12 months has elapsed since the receipt of the last Commission report on the matter (proposed paragraph 3(b)). The effect of this new element is two-fold; it permits the deferral of action on a report for the period of 12 months from the receipt of the report, and, where assistance arrangements have been made on the basis of a report, it permits changes to be made to those arrangements at any time within the 12 month period from the receipt of the report, without the necessity of submitting a new reference to the Commission;
- . Proposed sub-section section 3A clarifies the situation concerning the time after which action can be taken to provide assistance, in the case where the Minister has specified a period within which the Commission is to report on a matter (proposed paragraph 3A(a))



- if a report is received within 30 days of the expiration of the specified period, the Minister can act at any time thereafter (up to the period of 12 months from the receipt of the report (proposed paragraph 3(b) above),
- if no report is received at the expiration of 30 days after the specified period, the Minister shall be deemed to have received such a report at that time, for the purposes of taking any action which might be desired under sub-section 23(3), (proposed paragraphs 3A(c) and (d));
- . Proposed sub-section 3B is a redraft of the latter part of existing sub-section 23(3), and preserves the ability to provide assistance to an industry or industries under certain sections of the Customs Act 1901, or Commonwealth Acts made before the commencement of the Principal Act;
- . Omitting paragraph 5(e) (relating to the question of the value for duty of goods under section 160 of the Customs Act 1901) from the list of matters which the Minister may refer to the Commission for inquiry and report;
- . amending sub-section (6) to effect a technical drafting change consequent upon the removal of paragraph 5(e).

Sub-clauses(2),(3),(4), (5) and (6) introduce the transitional arrangements for Section 23 as follows: -

- . for references sent to the Commission before 7 June 1984 under Section 23 (a reference for long-term assistance as opposed to temporary assistance)
- where the Commission's report is received after 7 June 1984, irrespective of whether that date is before or after the commencement of this Amendment Act, the new sub-sections 23(3) and 23(3A) (incorporating the new 12 month revision rule) apply in relation to the report (proposed sub-clauses (3) and (4));

for references sent to the Commission after 7 June 1984 under Section 23 and before the commencement of this Amendment Act,

- where the Commission's report is received after 7 June 1984, irrespective of whether that date is before or after the commencement of this Amendment Act, the new sub-section 23(3) (incorporating the new 12 month revision rule) applies in relation to the report (proposed sub-clause (5)).

#### Report of Commission pursuant to reference

##### Clause 13

Sub-clause (1) repeals Sections 23A and 24 of the Principal Act;

- Section 24, dealing with the power of the Commission to inquire and report on matters of assistance on its own initiative, has been repealed, on the basis that such decisions are policy matters which are more appropriately made by the Government itself;
- Section 23A, dealing with the obligation on the Commission to report on matters pursuant to a reference, has been re-cast with the following elements;
  - the Commission must now report on all matters that the Minister has specified in the reference (proposed paragraph 23A(a)) and,
  - unless otherwise directed by the Minister, the Commission must report on courses of action that it considers to exist in relation to the matter, including the course of action it considers to be most advisable (proposed paragraph 23A(b)).

Sub-clauses (2) and (3) introduce the transitional arrangements for Section 23A as follows:

- for references sent to the Commission after 7 June 1984 under section 23 (a reference for long-term, as opposed to temporary assistance) and before the commencement of this Amendment Act;

- if the report of the Commission has not been received by the commencement date, the new reporting requirements of section 23A apply (proposed sub-clause (2));

- . for references sent to the Commission before 7 June 1984, the reporting requirements currently in Section 23A apply (proposed sub-clause(3)).

#### Repeal of Division 1 of Part IV

Clause 14 repeals Division 1 of Part IV of the Principal Act, relating to the Temporary Assistance Authority. This is a consequence of the Government's decision to abolish the Authority and transfer responsibility for advising on all temporary assistance matters to the Commission.

#### Omission of Heading

Clause 15 effects a technical drafting change to Division 2 of Part IV of the Principal Act, consequent upon the abolition of the Temporary Assistance Authority referred to in Clause 14.

#### Interpretation

Clause 16 amends Section 29 of the Principal Act by adding a new paragraph (aa) to define what industries are included in any reference under Part IV (relating to Temporary Assistance).

- . The reference is particularly relevant to the new policy guidelines for inquiries into temporary assistance (new Section 29A) and it focuses on groups of industries where all members of the group are related to the particular industry under reference (proposed paragraph (aa)).

#### Functions of Commission under Part IV

##### Policy guidelines for inquiry into temporary assistance

Clause 17 repeals Section 29A of the Principal Act and substitutes two new sub-sections as follows:

##### New Section 29AA

- . This new provision introduces the general functions of the Commission with respect to its new responsibilities in the area of advising on all temporary assistance matters.

New Section 29A

- . This new provision sets out the policy guidelines which are to govern the Commission in its consideration of references for temporary assistance to a particular industry. The Commission is obliged to have regard to the desire of the Government that assistance be provided to an industry only,
- if there has been a change in circumstances under which the relevant industry (or a group of industries that includes the relevant industry - as defined in new paragraph 29(aa)) operates, and, the change in circumstances
  - .. is largely outside the control of the relevant industry;
  - .. is peculiar to, or is having a particularly severe impact on, the relevant industry (or a group of industries that includes the relevant industry - as defined in new paragraph 29(aa)); and
  - .. has caused, or threatens, serious injury to the relevant industry (proposed paragraphs 29A(a), (b) and (c)).

Request by Minister for inquiry into temporary assistance

Clause 18 amends section 30 of the Principal Act by;

- . deleting from sub-section (1) the prerequisite to possible temporary assistance concerning the difficulty being experienced by an industry by reason of the importation of any goods. The new sub-section will now simply require that the industry concerned is experiencing difficulty.

Inquiry into, and report on, temporary assistance

Clause 19 repeals Section 30A of the Principal Act and substitutes a new section which sets out the obligations on the Commission with respect to an inquiry into and report on a temporary assistance reference under Section 30 of the Principal Act.

. In its inquiry,

- the Commission shall give notice of its inquiry in accordance with the procedure in Section 32; this is unchanged from the current Act (proposed paragraph 30A(a)); and
- report to the Minister in accordance with the request not later than 45 days after the day on which the request was made; this is unchanged from the current Act (proposed paragraph 30A(b));

. In its report,

- the Commission shall not recommend that assistance be provided to the particular industry;
  - .. where the provision of the assistance would seriously disadvantage another industry in Australia (proposed paragraph 30A(c));
  - .. for a period exceeding 12 months (proposed paragraph 30A(d));
- the Commission shall report on;
  - .. whether an inquiry into longer term assistance to the industry is warranted (proposed subparagraph 30A(e)(i));
  - .. whether the circumstances under which the industry (or a group of industries that includes the industry) is operating warrant an inquiry into the need for further temporary assistance prior to the expiry of any temporary assistance then in operation (proposed subparagraph 30A(e)(ii));
  - .. where applicable, any action which the Commission considers the industry should undertake during the period of temporary assistance (proposed subparagraph 30A(e)(iii)).

Action to provide temporary assistance

Clause 20 amends Section 30B of the Principal Act by;

- . adding a new sub-section (1A) which provides a provision similar to that proposed for sub-section 23(3A), to cater for the situation where a report pursuant to a temporary assistance reference under Section 30 of the Act is not received by the Minister within the prescribed 45 day limit. In that circumstance, the Minister shall be deemed to have received the report, for the purposes of taking any action which might be desired under Part IV;
- . adding a new sub-section (4) which provides a provision similar to that proposed for sub-section 23(3) relating to the 12 month revision rule. For the purposes of temporary assistance, the Government is empowered to revise or alter any decision or action it has taken in response to a temporary assistance report of the Commission, provided such revision or alteration takes place within 12 months after the date of receipt of the Commission's report.

Period of temporary assistanceAction by Minister to terminate assistance

Clause 21 repeals Sections 30C to 30H of the Principal Act and substitutes two new sections;

- . New section 30D  
This section introduces a time-limit of 12 months for any temporary assistance provided pursuant to a report of the Commission under Section 30A. The time is to run from the first day on which the temporary assistance was provided (as opposed to the day on which the report under Section 30A was received).
- . New Section 30H  
This section is similar in form to the existing Section 30H in the Principal Act.

## Repeal of Section 30JA and Division 3 of Part IV

Clause 22                repeals Section 30JA of the Principal Act and Division 3 of Part IV, consequent upon the abolition of the Temporary Assistance Authority. Sub-clause (2) is a transitional provision.

## Conduct of inquiries

Part V of the Principal Act, relating to the conduct of inquiries, has been recast to update certain procedural aspects of Commission hearings, and reflects certain changes to the entire inquiry process. The most substantive change is to the procedure surrounding the initial inquiry stage, prior to the production of the draft report. Public hearings are to be dispensed with in the initial period, with the result that most if not all information gathered by the Commission will be by written submissions. Other changes at the public hearing stage of an inquiry, after the publication of the draft report, relate to the Government's desire to reduce formality and facilitate the submission of written evidence. The new procedures for the whole inquiry process are as follows:

### General conduct of inquiries

#### Notice to person to furnish information and documents

Clause 23                inserts a two new sections into the Principal Act, to govern the conduct of inquiries at the initial stages of a reference, as follows:

##### New Section 31A

- .        The Commission is to have a discretion as to the procedure to be followed, and it is not bound to act in a formal manner, nor is it subject to the rules of evidence. In addition, it may receive information or submissions in the form of oral or written statements and consult such persons as it thinks fit.

##### New Section 31B

- .        The Commission is to have a power to require a person to send to the Commission, for the purposes of its inquiry, a statement setting out such information and such documents as are specified in the Commission's written notice to the person. Where a person fails to comply with such a notice he shall be liable to a penalty of \$1,000 or 6 months imprisonment.

Clause 24                repeals Sections 33, 34, 35, 36 and 37 of the Principal Act and inserts several new or re-cast sections as follows:

Commission to prepare draft reportNew Section 32A

- . This new section imposes an obligation on the Commission to prepare a draft report on an inquiry into a matter held pursuant to a reference under Section 23 (relating to long-term assistance, as opposed to temporary assistance) unless the Minister, when referring the matter to the Commission, otherwise directs.
- . The draft report must contain those elements required of a Commission report under Part III of the Act and it must be made available to the public.

Power to hold hearingsNew Section 32B

- . This new section obliges the Commission to hold hearings for the purposes of an inquiry, as follows:
  - where the preparation of a draft report on a matter is required, then until the preparation of the draft report, the Commission shall inform itself for the purposes of the inquiry without holding any hearings. This is consistent with the general desire to dispense with public hearings in the initial (pre-draft report) stages of an inquiry. If a hearing is to be conducted in the above circumstances, it may only be held with the consent of the Minister in writing (proposed sub-section 32B(2));
  - Notice of hearings for the purposes of an inquiry, is required to be given, similar to the requirement under existing Section 32 for inquiry notices (proposed sub-section 32B(3)).

Summons to person to attend hearingNew Section 32C

- . This new section continues the previous power of the Chairman, or the Commissioner who has been nominated to preside at the hearing concerned, to summon a person in



writing to appear at a hearing to give evidence and to produce such documents as are specified in the summons (existing Section 34) (proposed sub-section 32C(1));

- . In addition, the section now gives the Commission a power to direct a person who has been summoned to appear at a hearing to submit a written statement setting out such information and sending to the Commission such documents as are specified, in lieu of appearing at the hearing (proposed sub-section 32C(3))
- . Where a person fails without reasonable excuse, to send to the Commission the statement or documents requested, he shall be liable to a penalty of \$1,000 or 6 months imprisonment (proposed sub-section 32C(3))

#### Procedure at hearings

- . New sub-section 33(1) requires hearings conducted by the Commission and evidence given at a hearing, subject to this section, to be in public. The requirement in the existing sub-section 33(1) that evidence be given on oath or affirmation has been deleted.
- . New sub-section 33(2) is similar to the existing sub-section 33(2) and provides for the Commission, in certain circumstances, to take evidence in private if it considers it desirable and in the public interest to do so.
- . New sub-section 33(3) is similar to the existing sub-section 33(3) and provides for the Commission, to permit a witness to tender written evidence. However, the previous requirement that written evidence be verified by oath or affirmation is replaced by a requirement that the evidence be only signed by the witness tendering that evidence.
- . New sub-section 33(4) provides a discretion for the Commission to permit or require a person to submit written evidence instead of appearing in person as presently required.

Failure of persons summoned to attend

- . New section 35 is similar to the existing section 35 and provides that persons summoned to appear at a hearing (proposed sub-section 32C(1)) shall not without reasonable excuse fail to appear, or to continue to appear, until excused by the Commissioner presiding. The penalty for breach of this section has been increased from \$1000 or imprisonment for 3 months to \$1000 or imprisonment for 6 months.

Refusal to answer questions or produce documents

- . New section 37 provides a penalty of \$1000 or imprisonment for 6 months for a witness refusing or failing to answer a question or refusing or failing to produce certain documents at a hearing, without reasonable excuse.

False or misleading evidence or information

- . New section 37A provides a penalty of \$1000 or imprisonment for 6 months for;
  - furnishing to the Commission false or misleading information,
  - giving evidence at a hearing before the Commission which is false or misleading, or
  - sending to the Commission, pursuant to a summons to furnish information, a statement containing information which is false or misleading.

Clause 25

repeals and remakes in a modified form section 41 of the Principal Act dealing with allowances payable to witnesses appearing on summons. It adds a new proposed section 40A dealing with the ability of the Commission to make certain written statements public, in such a manner as it thinks fit, subject to certain specified conditions.

Person prejudiced in employment by reason of assisting commissionClause 26

amends sub-section 42(1) by changing the basis of the prohibition placed upon an employer in connection with dismissing employees or prejudicing their employment. The amendment will provide that employees shall not be

dismissed or prejudiced in their employment by reason of their giving assistance to the Commission in connection with an inquiry, which is broader than the present prohibition, which is confined to dismissal for the prejudicing of employees where they appear as a witness or give evidence at an inquiry by the Commission.

Sub-section 42(2) is likewise amended to accord with the new criterion for sub-section 42(1) as outlined above.

#### Staff

Clause 27 omits sub-section 43(5) of the Principal Act to delete references to temporary assistance as a consequence of the abolition of the Temporary Assistance Authority.

#### Repeal of Section 44

Clause 28 Repeals section 44 of the Principal Act as the functions set out in that provision are now covered by s.87 TA of the Public Service Act.

#### Annual Report

Clause 29 amends sub-section 45(1) by inserting an additional requirement that the annual report shall be prepared and furnished to the Minister as soon as practicable, and retains the present 3 month deadline from 30 June each year for submission of that report.

#### Repeal of Schedule

Clause 30 repeals the Schedule to the Principal Act. The Schedule makes references to a number of obsolete Tariff Board Acts.

#### Further amendments

Clause 31 provides consequential amendments and amendments of a drafting nature as set out in the Schedule to the Amending Bill.

#### Transitional provisions - temporary assistance

Clause 32 Is a transitional provision relating to temporary assistance reports received between 7 June 1984 and the commencement of the Amending Bill and is similar in form to the transitional provisions for assistance embodied in Clauses 11, 12 and 13.

Transitional provisions - conduct of inquiries

Clause 33        Is a transitional provision relating to inquiries commenced by the Commission before and after the commencement of this Act.







