

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INDUSTRY COMMISSION BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,  
the Honourable P. J. Keating, MP)



## INDUSTRY COMMISSION BILL 1989

### GENERAL OUTLINE

The Bill establishes the Industry Commission and defines its functions and powers. The Commission will encompass the functions currently performed by the Industries Assistance Commission, the Inter-State Commission and the Business Regulation Review Unit which have similar objectives in promoting the efficient use of resources in the economy. The Commission's chief functions will be to hold public inquiries on matters affecting industry which are referred to it by the Government. A set of policy guidelines are provided to guide the Commission in its work. The Government intends that the Commission will be the major review and inquiry body on industry matters.

The Bill draws largely upon the provisions of the IAC Act 1973, but also draws on appropriate provisions of the ISC Act 1975. The Bill extends the scope of the inquiry process to all matters relating to industry. As in the IAC Act 1973, Ministers are constrained from providing prescribed forms of assistance to industry without a recent inquiry and report by the Commission.

The Bill covers administrative arrangements for the establishment of the Commission. It provides for the appointment of a Chairperson, Commissioners and Associate Commissioners, and the transfer of staff from both the IAC and ISC to the Commission.

Terms of reference for public inquiries will be decided by the Government and they, along with timing of hearings, will be publicised in newspapers circulating in the States and Territories. All interested parties will have the opportunity to take part in the inquiry process, including commenting on any background papers and draft reports prepared for public consideration. On receipt of the final report, the Minister will generally table it in both Houses of Parliament within 25 sitting days.

The Commission will have the power to compel witnesses to produce documents and appear at hearings, and penalties are provided for non-compliance or for giving false or misleading information.

The Bill provides for the repeal of the IAC Act 1973 and the ISC Act 1975 and includes transitional provisions. Repeal of parts of the ISC Act 1975 would not take place until all offices of ISC Commissioner are vacant.

### Abbreviations

The following abbreviations are used in this Explanatory Memorandum:

Bill : Industry Commission Bill 1989  
 BRRU : Business Regulation Review Unit  
 Commission : Industry Commission  
 IAC : Industries Assistance Commission  
 ISC : Inter-State Commission

### FINANCIAL IMPACT STATEMENT

Financial costs are limited to normal running costs of the Commission. The proposed wider functions of the Industry Commission and the substantial set of initial references already announced by the Government, will be handled under the announced appropriation for the IAC, supplemented by monies appropriated for running costs of the ISC and BRRU, all of which are to be transferred to the Commission. There should therefore be no net financial impact.

### NOTES ON CLAUSES

#### PART 1 - PRELIMINARY

##### Clause 1: Short Title

1. The clause provides for the Act to be cited as the Industry Commission Act 1989.

##### Clause 2: Commencement

2. The clause provides for different commencement dates for sections of the Act. Save for clauses 1 and 2, which commence with Royal Assent, the provisions commence on a day or days to be fixed by Proclamation. All clauses following and including clause 3, except for the repeal provisions of clause 48(3), would commence on a day fixed by Proclamation, or six months after Royal Assent, whichever is sooner. Clause 48(3) provides for separate proclamation concerning a repeal.

### Clause 3: Definitions

3. The clause provides for definition of certain terms used in the Act. "Industry" is broadly defined. "Subject of Commonwealth Power" follows the provisions of the Constitution.

### Clause 4: Act binds Crown

4. The clause provides that the Act binds the Crown.

## PART 2 - ESTABLISHMENT AND FUNCTIONS OF INDUSTRY COMMISSION

### Clause 5: Establishment of Commission

5. The clause establishes the Industry Commission.

### Clause 6: Functions of Commission

6. The clause specifies that the functions of the Commission are to hold inquiries and make reports on industry matters referred to it by the Minister and to do anything incidental to those functions. The latter, for example, would, in cognisance of the policy guidelines set out in clause 8, contemplate activities of an Office to give advice on Business Regulation within the Commission, the preparation of occasional reports agreed by the Government without public inquiry, and the publishing of research and information papers that contribute to inquiries on industry matters.

### Clause 7: Reference of matters to Commission

7. The clause specifies that the Minister may set a reporting date for a Commission inquiry, that the Minister may withdraw or amend the terms of reference prior to receipt of the relevant report and that the Commission may inquire into any matters it considers relevant to that matter referred.

### Clause 8: General policy guidelines for Commission

8. The clause specifies the Government policy guidelines to which the Commission is generally to have regard in the performance of its functions. These guidelines will not apply to inquiries into whether a Commercial Tariff Commission Order should have been made or revoked, being matters subject to specific guidelines under the Customs Act 1901.

### Clause 9: Reports to be tabled

9. The clause ensures that the final inquiry report is made public as soon as possible after the Minister receives it, unless the Commission recommends delay. The 25 sitting day period allowed for the Minister to table the report has been set to allow sufficient time for printing.

### PART 3 - ACTION BY COMMONWEALTH MINISTERS RELATING TO ASSISTANCE TO INDUSTRY

Clause 10: Ministers not to take certain action relating to assistance to industry

10. The clause specifies that a Commonwealth Minister (or delegate) may not take certain actions prescribed under clause 11 unless a report by the Commission in relation to the matter has been received within the previous 12 months. Allowance is made for a delay in the receipt of a Commission report.

Clause 11 - Actions subject to section 10 restrictions

11. The clause prescribes the matters which are subject to the restrictions stipulated in section 10. Prescribed matters generally include changes in restrictions on imports, and changes in financial assistance to an industry for more than 2 years. Financial assistance and an industry are defined.

Clause 12: Actions exempt from section 10

12. The clause specifies those actions which are exempt from the restrictions of clause 10. Inter alia, clause 10 would not apply to:

- . payments to Commonwealth corporations;
- . the imposition, increase or reduction of a tax (other than customs duty);
- . change in customs duties that are only made to match corresponding changes in excise duties;
- . maintaining the level of customs duty previously applying where a decision by a tribunal or court on a tariff classification has had the effect of altering the duty;
- . the making of a Commercial Tariff Concessional Order or a by-law under the Customs Act 1901; and
- . action concerning international trade agreements and developing country tariff preferences.

### PART 4 - CONDUCT OF INQUIRIES

Clause 13: General conduct of inquiries

13. The clause gives the Commission wide discretion in how inquiries are to be conducted.

Clause 14: Notice of inquiries

14. The clause requires the Commission to give notice of an inquiry by advertisement in a newspaper in each State and Territory.

Clause 15: Notice to person to furnish information and documents.

15. The clause gives the Commission the power to obtain relevant information and documents for the purposes of an inquiry by giving written notice to persons believed capable of providing that information or documentation. The clause (and other relevant clauses in this Part) also prescribes the penalty for non-compliance ie, either 6 months' imprisonment or the equivalent financial penalty (currently \$3000) as prescribed in the Crimes Act 1914. Sub-clause (3) provides protection concerning a person incriminating themselves.

Clause 16: Power to hold hearings

16. The clause specifies that the Commission must hold hearings for purposes of an inquiry and must publicly advertise its intention to hold hearings.

Clause 17: Procedure at hearings

17. The clause provides for hearings to be held in public except when the Commission considers confidential material is involved.

Clause 18: Summons to person to attend hearing

18. The clause provides for persons to be summoned to give evidence at a hearing and provide stipulated documents prior to, or at, hearings of the Commission.

Clause 19: Failure of person summoned to attend

19. The clause prescribes the penalty for failure of a person to answer a summons to appear before a hearing of the Commission without reasonable excuse.

Clause 20: Refusal to answer questions or produce documents

20. The clause prescribes the penalty for failure of a person to answer a question, or provide documents in an inquiry without reasonable excuse.

Clause 21: False or misleading evidence or information

21. The clause prescribes the penalty for knowingly providing false or misleading evidence to the Commission.

Clause 22: Contempt of Commission

22. The clause prescribes the penalty for contempt of the Commission.

Clause 23: Powers of the Commission in relation to documents produced

23. The clause provides for the Commission to take possession of documents tendered for purposes of an inquiry and to make them publicly available.

Clause 24: Written statements and submissions to be made public

24. The clause ensures that written evidence or documents are made public except in those circumstances where a person objects and the Commission considers the evidence would otherwise have been given privately.

Clause 25: Allowances to witnesses

25. The clause provides for the payment of a person's travelling and other prescribed expenses when the person appears at a hearing because of a summons.

Clause 26: Persons prejudiced in employment because of assisting Commission

26. The clause prescribes the penalty on persons who prejudice another person's employment because they have given or intend to give evidence to a hearing of the Commission.

Clause 27: Limitation on powers under this part

27. The clause specifies that the exercise of the Commission's powers for the purposes of an inquiry, for example to obtain information and documents from any person (including a State), is limited to the extent that the subject matter relates to a subject of Commonwealth power. Clause 3 gives the definition of subject of Commonwealth power.

## PART 5 - CONSTITUTION OF COMMISSION

Clause 28: Constitution of Commission

28. The clause specifies the composition of the Commission, being a Chairperson and from 4 to 8 Commissioners.

Clause 29: Terms of appointment

29. The clause provides for the appointment of full time Commissioners for up to five years by the Governor-General.



Clause 30: Outside employment

30. The clause restricts the ability of Commissioners to engage in paid employment outside of their office.

Clause 31: Associate Commissioners

31. The clause provides for the appointment of Associate Commissioners by the Minister, after consultation with the Chairperson. It also specifies their powers and functions in relation to an inquiry by a Division of the Commission of which they are a member.

Clause 32: Executive Commissioner

32. The clause provides for the Chairperson to appoint one of the Commissioners to a position of Executive Commissioner in order to assist the Chairperson in the performance of his/her duties.

Clause 33: Remuneration and allowances

33. The clause provides for remuneration and allowances of Commissioners and Associate Commissioners to be paid as determined by the Remuneration Tribunal, or as prescribed.

Clause 34: Leave of absence

34. The clause enables the Minister to grant leave of absence to a Commissioner or full time Associate Commissioner, and to delegate authority to the Chairperson to grant leave of absence to a Commissioner or full-time Associate Commissioner.

Clause 35: Acting appointments

35. The clause provides for the Minister to appoint an acting Chairperson or acting Commissioners for a period of not more than 12 months.

Clause 36: Resignation

36. The clause provides for the resignation of Commissioners and Associate Commissioners.

Clause 37: Retirement

37. The clause provides for the retirement of Commissioners and Associate Commissioners on the grounds of invalidity.

Clause 38: Suspension and removal from office

38. The clause specifies the grounds on which, and the procedures under which, the Governor-General may suspend or remove a Commissioner or Associate Commissioner from office, and the action to be taken.

#### Clause 39: Delegation by Chairperson

39. The clause provides for the Chairperson to delegate any of his/her powers and functions to a Commissioner or to an Associate Commissioner within a Division.

#### Clause 40: Meetings of Commission

40. The clause provides for the Chairperson to convene whatever meetings he or she thinks are necessary subject to consultation, as far as practicable, with the Commissioners. It also specifies quorum numbers, the possible nature of meetings, that decisions are by a majority vote, and that the Chairperson has a deliberate vote and, if necessary, a casting vote.

#### Clause 41: Chairperson may authorise Commission to sit in Divisions

41. Under the clause, the Chairperson may determine that the powers of the Commission are to be exercised by a Division of the Commission.

#### Clause 42: Disclosure of interests

42. The clause provides for the disclosure of interests by the Chairperson and Commissioners and prescribes the procedures to be followed in dealing with potential conflict of interest situations.

### PART 6 - MISCELLANEOUS

#### Clause 43: Staff

43. The clause provides for Commission staff to be employed under the Public Service Act 1922 and for other people to provide services to the Commission. The Chairperson is to have relevant powers to a Secretary under the Public Service Act 1922.

#### Clause 44: Protection of Commissioners and witnesses

44. The clause ensures that Commissioners, witnesses, representatives, and persons sending documents to the Commission have the same protection as that given in High Court proceedings.

#### Clause 45: Annual report

45. The provision requires that the Commission prepare an annual report and that the Minister table the report within 15 sitting days of its receipt. The annual report is to report on the economic performance of industry and the effects of assistance and regulations on industry on the economy generally.

**Claus 46: Conduct by directors, servants and agents**

46. The clause describes the conduct of directors, servants and agents taken on behalf of a body corporate.

**Clause 47: Regulations**

47. The clause enables the Governor-General to make regulations regarding the Act.

**PART 7 - REPEALS AND TRANSITIONAL PROVISIONS**

**Division 1 - Repeals**

**Clause 48: Repeals**

48. The clause provides for the IAC Act 1973 and for all but certain sections of the ISC Act 1975 to be repealed. The clause also provides for those certain sections of the ISC Act to be repealed by Proclamation on the vacation of all the offices of the ISC Commissioner.

**Division 2 - Transitional Provisions**

**Clause 49: Definitions**

49. The clause provides for definitions in respect of transitional provisions.

**Clause 50: Staff**

50. The clause specifies that a person employed by the IAC or the ISC is to be treated as a member of staff of the Commission.

**Clause 51: Appropriations**

51. The clause provides for appropriations to the IAC and ISC to be treated as an appropriation to the Commission, subject to the appropriation requirements of ISC Commissioners and money spent before commencement of this Act.

**Clause 52: Commissioners - members of the ISC**

52. The clause provides for a Commissioner who was a member of the ISC immediately before commencement of the Act, to be subject to conditions of appointment no less favourable than would apply to a member of the ISC until the end of the period for which the person was appointed as a member of the ISC.

**Clause 53: Commissioners - members of the IAC**

53. The clause provides for a Commissioner who was a member of the IAC immediately before commencement of the Act to be

subject to conditions of appointment no less favourable than would apply to a member of the IAC until the end of the period for which the person was appointed as a member of the IAC Commissioner.

**Section 54: Inquiries by IAC**

54. The clause provides that inquiries and reports not completed by the IAC may be completed by the Commission.

**Section 55: Records of IAC and ISC**

55. The clause provides that the records of the IAC and ISC will become records of the Commission and that the Commission will respect the confidentiality of any of these records unless it decides otherwise with the consent with the authors of such records. It also protects any directions given by the ISC to prohibit or restrict the publication of evidence and documents given in respect of an ISC hearing.

**Section 56: Protection of witnesses**

56. The clause provides that a person who gave evidence or produced a document in an IAC or ISC inquiry is granted the same protection as if the person had done so in a hearing before the Commission.

**Section 57: References to Tariff Board and IAC**

57. The clause specifies that references in Commonwealth law to the Tariff Board or IAC will be treated as references to the Commission.



