Industry Commission Bill 1989

Date Introduced: 2 November 1989
House: House of Representatives
Portfolio: Treasury

Digest of Bill

Purpose

To establish the Industry Commission (IC) to hold inquiries and make reports on matters relating to industry referred to it by the Government.

Background

The Industries Assistance Commission (IAC) was established under the Industries Assistance Commission Act 1973. The IAC is required to conduct public inquiries on industry assistance matters referred to it by the Government. The IAC may inspect and copy documents and summon persons to give evidence in their inquiries. Since its establishment, the IAC has presented approximately 400 reports on assistance arrangements for individual industries in the primary and manufacturing sectors. In 1988–89, the IAC’s inquiry program focused on the services sector. A report on domestic barriers to international trade in services was forwarded to the Government in July 1989. The IAC also conducted inquiries on the impact of non-tax government charges on the competitiveness of business in Australia and on barriers to the competitiveness and efficiency of travel and tourism. Other reports completed were on coastal shipping and regulations covering the packaging and labelling of food products.

The IAC comprises a Chairperson and full-time Commissioners appointed by the Governor-General, part-time Associate Commissioners appointed by the Minister, and support staff appointed under the Public Service Act 1922. In 1988–89, IAC staff and full-time Commissioners numbered 213. Expenditure in respect of the IAC in 1988–89 was $11.335 million.1

Section 101 of the Constitution states that there shall be an Inter-State Commission to adjudicate on the operation of the trade and commerce power. This was a wider function than that envisaged at the Constitutional Conventions, where the primary purpose of the body was foreseen as the supervision of State railway charges to prevent blockages to trade. The first Inter-State Commission was established by the Inter-State Commission Act 1912 and commenced operation in 1913. Following a High Court case in 1915, which ruled that the body could not exercise judicial power, the body fell into disuse and ceased its activities in 1920. The legislation providing for the Inter-State Commission was repealed by the Menzies government in 1950. A new Bill to establish an
Inter – State Commission was presented in 1975, but the proposed powers of the body were restricted by amendments passed in the Senate. The Inter – State Commission Act 1975 received Royal Assent in October 1975, but was not proclaimed before the change in government. The Act was neither repealed nor proclaimed by the Fraser governments. With the change in government, the Act was proclaimed in September 1983.

In the 1989 Budget, the Government announced that the IAC was to be restructured and renamed the IC, and would become the Government's primary review and inquiry body on industry matters. The Government also announced, that in future all references on transport matters would be sent to the IC instead of the Inter–State Commission (ISC); that the staff and functions of the ISC would be absorbed by the IC as far as possible; and that an Office of Business Regulation would be established within the IC to absorb the functions of the Business Regulation Review Unit. In addition, a two year work program for the proposed IC was announced, with the timing and terms of reference of each inquiry to be announced at the time that references are sent to the IC. The references proposed include railways; passenger motor vehicles; product liability; and energy generation and distribution.2

On 18 October 1989, the Government announced five references to be sent to the IAC immediately and a timetable for the remaining 13 inquiries of the proposed IC’s two year program. The five references sent to the IAC are mining and minerals processing; construction costs of major projects; product liability; recycling of products; and aids for the disabled.3

Main Provisions

‘Industry’ is defined in clause 3 to include industry of any kind including any business or activity relating to goods or services.

‘Subject to Commonwealth power’ is defined in clause 3 as any matter with respect to which the Parliament has the constitutional power to make laws, including the corporations power; trade and commerce power; State grants power; and banking power. This definition aims to satisfy the constitutional limits of the Commonwealth’s power.

The IC will be established by clause 5.

Clause 6 provides that the functions of the IC will be to hold inquiries and make reports to the Minister on matters relating to industry referred to it by the Minister and to do anything incidental to those functions. ‘Matters relating to industry’ is defined to include legislative or administrative action taken, or to be taken, by the Commonwealth, a State, or a Territory in relation to industry.

Clause 8 provides that the IC is to have regard to certain Government policy guidelines in performing its functions, including to encourage the development and growth of Australian industries that are efficient in the use of resources,
self-reliant, enterprising, innovative and internationally competitive; to facilitate structural change and to ease the associated hardships; and to reduce the regulation of industry.

Subject to clause 12, the Minister is not to take certain actions, including the imposition, removal, increase or reduction of duties on goods imported in Australia, or provide financial assistance for over 2 years to an industry, unless a report by the IC in relation to the matter has been received by the Minister within the previous 12 months (clauses 10 and 11).

Clause 12 provides that certain Ministerial actions will be exempt from the restrictions proposed by clause 10, including where the action is necessary: to correct tariff anomalies, errors or ambiguities; to correct errors in the implementation of a government decision; in relation to bilateral or multilateral trade agreements and developing country tariff preferences; and payments to Commonwealth corporations.

Part 4 of the Bill (clauses 13–27) deals with the conduct of IC inquiries; powers to direct persons to furnish information, documents, attend hearings; allowances and expenses for persons attending hearing; and offences and penalties for not complying with certain IC directions. The more interesting offences include hindering, molesting or interfering with a Commissioner of the IC; or creating a disturbance, or taking part in a disturbance, at a IC hearing; or doing anything else that would, if the IC were a court of record (e.g. a Supreme Court) constitute a contempt of court. The maximum penalty for breach of this provision will be imprisonment for six months or a fine of $3000 (clause 22). It will also be an offence for a person to prejudice another persons employment (i.e. refuse to employ, dismiss, or threaten to dismiss a person from their employment) because they have given, or propose to give, information, documents, or evidence at a hearing of the IC. The maximum penalty for breach of this provision will be imprisonment for six months or a fine of $3000 (clause 26).

Part 5 of the Bill (clauses 28–42) deals with the constitution of the IC and contains the standard administrative provisions, including those for remuneration and allowances, suspension and removal from office, and disclosure of pecuniary interests of Commissioners and Associate Commissioners. The IC is to consist of a Chairperson and between four and eight Commissioners (clause 28). Commissioners will be appointed on a full-time basis, for up to five years, by the Governor-General (clause 29). The Minister may, after consulting with the Chairperson of the IC, appoint persons to be Associate Commissioners. An Associate Commissioner may be appointed on a full-time or part-time basis and will have the same powers, duties, and functions as a Commissioner in relation to an inquiry by a Division of the IC of which they are a member (clause 31). A Commissioner or Associate Commissioner is to be paid the remuneration and allowances determined by the Remuneration Tribunal or, if no determination is in force, a prescribed amount. A Commissioner or Associate Commissioner is also to be paid such other allowances as are prescribed (clause 33).
The *Industries Assistance Commission Act* 1973 and the *Inter-State Commission Act* 1975, other than certain sections of the latter Act dealing with, for example, remuneration and allowance of ISC members, will be repealed by clause 48. The clause will also allow the latter provisions to be repealed by regulation.

References

For further information, if required, contact the Economics and Commerce Group.

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