



# **Prices Surveillance Act 1983**

**No. 145 of 1983**

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# **Prices Surveillance Act 1983**

**No. 145 of 1983**

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**An Act to make provision for the surveillance of, and the holding of inquiries into, prices charged or proposed to be charged for the supply of certain goods and services in Australia**

*[Assented to 22 December 1983]*

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

## **PART I—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Prices Surveillance Act 1983*.

### **Commencement**

2. This Act shall come into operation on a date to be fixed by Proclamation.

**Interpretation**

**3. (1)** In this Act, unless the contrary intention appears—

“appoint” includes re-appoint;

“associate member” means an associate member of the Authority;

“Authority” means the Prices Surveillance Authority established by this Act;

“Chairman” means the Chairman of the Authority and includes a person acting in the office of Chairman of the Authority;

“Commonwealth authority” means—

(a) the Commonwealth;

(b) an authority, institution or other body (other than a society, association or incorporated company) established for a public purpose by or under a law of the Commonwealth or of the Australian Capital Territory; and

(c) a society, association or incorporated company in which the Commonwealth, or an authority, institution or other body of the kind referred to in paragraph (b), has a controlling interest;

“declared person”, in relation to goods or services of a particular description, means a person in relation to whom a declaration under paragraph 21 (1) (b) in relation to goods or services of that description is in force;

“document” includes—

(a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them;

(b) a disc, tape, paper, or other device from which sounds or messages are capable of being reproduced; and

(c) any other record of information;

“exempt supply”, in relation to goods or services of a particular description, means a supply of goods or services of that description in relation to which a declaration under paragraph 21 (1) (c) is in force;

“full-time member” means a member who is appointed as a full-time member;

“goods” includes—

(a) ships, aircraft and other vehicles;

(b) animals, including fish;

(c) minerals, trees and crops, whether on, under or attached to land or not;

(d) water; and

(e) gas and electricity;

“inquiry” means an inquiry held by the Authority in accordance with Part III into a matter or matters relating to prices for the supply of goods or services;

“law of the Commonwealth” does not include—

- (a) the *Northern Territory (Self-Government) Act 1978*;
- (b) the *Norfolk Island Act 1979*; or
- (c) a law made under, or continued in force by, an Act referred to in paragraph (a) or (b);

“meeting” means a meeting of the Authority and includes a sitting of the Authority for the purpose of taking evidence or receiving submissions in an inquiry;

“member” means the Chairman or another member of the Authority and includes a person acting in the office of a member of the Authority;

“notified goods or services” means goods or services of a description in relation to which a declaration under paragraph 21 (1) (a) is in force;

“person” includes a Commonwealth authority;

“prescribed authority” means—

- (a) a State, the Northern Territory or Norfolk Island;
- (b) an authority, institution or other body (other than a society, association or incorporated company) established for a public purpose by or under a law of a State, of the Northern Territory or of Norfolk Island; and
- (c) a society, association or incorporated company in which a State, the Northern Territory, Norfolk Island, or an authority, institution or other body of a kind referred to in paragraph (b), has a controlling interest;

“price” includes—

- (a) a charge of any description; and
- (b) in relation to goods or services—any pecuniary benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply by the person of the goods or services;

“services” includes the rights or benefits provided under an agreement for the performance of work (otherwise than under a contract of service), whether with or without the supply of goods;

“supply”, in relation to goods, means supply (including re-supply) by way of sale (including sale by wholesale and sale by retail) and, in relation to services, includes provide, grant or confer.

(2) In this Act, unless the contrary intention appears—

- (a) a reference to the supply of goods or services includes a reference to agreeing to supply goods or services;
- (b) a reference to the supply of goods includes a reference to the supply of goods together with other property or services, or both;
- (c) a reference to the supply of services includes a reference to the supply of services together with property or other services, or both;

- (d) a reference to the supply of goods does not include a reference to—
  - (i) a supply for use outside Australia;
  - (ii) a supply for which a price is not charged; or
  - (iii) any other prescribed supply; and
- (e) a reference to the supply of services does not include a reference to—
  - (i) a supply outside Australia;
  - (ii) a supply for which a price is not charged; or
  - (iii) any other prescribed supply.

(3) For the purposes of this Act, a supply by way of retail sale shall be taken not to be a supply on terms and conditions that are the same as, or substantially similar to, the terms and conditions of a supply by way of wholesale sale.

(4) A reference in this Act to a member of the staff of the Authority is a reference to—

- (a) a member of the staff referred to in sub-section 41 (1); or
- (b) a person engaged under sub-section 42 (1).

#### **Application of Act**

4. (1) Subject to sub-section (2), this Act applies in relation to the supply of goods or services—

- (a) by a Commonwealth authority;
- (b) by a foreign corporation;
- (c) by a trading corporation in the course of, or for the purposes of, its trading operations;
- (d) by a financial corporation in the course of, or for the purposes of, its business operations;
- (e) by a body corporate incorporated in a Territory (other than the Northern Territory or Norfolk Island);
- (f) in an internal Territory (other than the Northern Territory); or
- (g) in the course of, or in connection with, trade or commerce—
  - (i) among the States;
  - (ii) between a State and an internal Territory; or
  - (iii) between 2 internal Territories,

and not otherwise.

(2) This Act does not apply in relation to the supply of goods or services by a prescribed authority.

#### **Extent to which Act binds Crown**

5. (1) This Act binds the Crown in right of the Commonwealth, but does not bind the Crown in right of a State, of the Northern Territory or of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth liable to be prosecuted for an offence.

## **PART II—CONSTITUTION OF PRICES SURVEILLANCE AUTHORITY**

### **Prices Surveillance Authority**

6. (1) There shall be a Prices Surveillance Authority, which shall consist of a Chairman and 3 other members.

(2) The members shall be appointed by the Governor-General.

(3) A member may be appointed as a full-time member or as a part-time member.

(4) The performance of the functions or the exercise of the powers of the Authority is not affected by reason only that the number of members is less than 4 unless a continuous period of 6 months has elapsed since the number of members fell below 4.

### **Period of appointment**

7. (1) Subject to this Act, a member holds office for such period not exceeding 5 years as is specified in the instrument of his appointment, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed as a member and a person shall not be appointed as a member for a period that extends beyond the date on which he will attain the age of 65 years.

### **Terms and conditions of appointment**

8. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) Sub-sections (1) and (2) have effect subject to the *Remuneration Tribunals Act 1973*.

(4) The Chairman may direct and control travel by the other members of the Authority in connection with their duties as members.

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

### **Leave of absence**

9. The Minister may grant leave of absence to a full-time member on such terms and conditions as to remuneration or otherwise as the Minister determines.

**Outside employment**

10. Except with the consent of the Minister, a full-time member shall not engage in paid employment outside the duties of his office.

**Acting appointments**

11. (1) The Minister may appoint a person to act in the office of Chairman, or to act in the office of a member—

- (a) during a vacancy in the office of Chairman, or in the office of a member, as the case may be, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairman, or a member, as the case may be, is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,

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

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

(3) The Minister may—

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

(4) Where a person is acting in the office of Chairman, or in the office of a member, in accordance with an appointment made under paragraph (1) (b) and that office becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) The appointment of a person to act in the office of Chairman, or to act in the office of a member, ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

(6) While a person is acting in the office of Chairman, or in the office of a member, he has and may exercise all the powers, and shall perform all the functions, of the Chairman, or of a member, as the case may be, under this Act.

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

(8) In this section, “member” does not include the Chairman.



**Associate members**

**12. (1)** The Minister may, after consultation with the Chairman, appoint a person to be an associate member, or persons to be associate members, of the Authority.

**(2)** An associate member shall be appointed for a period commencing on a day specified in the instrument of his appointment and ending on the day on which the Authority completes an inquiry and report so specified.

**(3)** An associate member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

**(4)** An associate member shall be paid such allowances as are prescribed.

**(5)** Sub-sections (3) and (4) have effect subject to the *Remuneration Tribunals Act 1973*.

**(6)** The Chairman may direct and control travel by associate members in connection with their duties as associate members.

**(7)** Subject to this section, an associate member holds office on such terms and conditions (if any) as the Minister determines.

**(8)** An associate member who has been appointed for the purposes of a particular inquiry shall, for the purposes of that inquiry, be deemed to be a member.

**Disclosure of interests**

**13. (1)** The Chairman shall, to the best of his knowledge, give written notice to the Minister of all direct or indirect pecuniary interests that he has or acquires in any business or in any body corporate carrying on a business.

**(2)** A member (other than the Chairman) shall, to the best of his knowledge, give written notice to the Chairman of all direct or indirect pecuniary interests that he has or acquires in any business or in any body corporate carrying on a business.

**(3)** The Chairman may, if he considers it appropriate to do so, inform the Minister of a matter of which a member has given the Chairman notice pursuant to sub-section (2).

**(4)** Where an associate member who is to be deemed to be a member of the Authority for the purposes of a particular inquiry and report by the Authority has or acquires any direct or indirect pecuniary interest that could conflict with the proper performance of his functions in relation to that inquiry, he shall, to the best of his knowledge, disclose the interest to the Chairman.

**(5)** A member who is aware that he has a direct or indirect pecuniary interest in a matter relating to a notice given by a person to the Authority under paragraph 22 (2) (a) shall not exercise, in relation to the notice, a power under this Act unless the member has informed the person in writing of that interest.

(6) A member who is aware that he has a direct or indirect pecuniary interest in a matter relating to an inquiry that is to be held, or is being held, in relation to the supply of goods or services by a particular person or persons shall not exercise, in relation to the inquiry, a power under this Act unless the member has informed the person, or each of the persons, in writing of that interest.

(7) Where a member—

(a) is aware that he has a direct or indirect pecuniary interest in a matter relating to an inquiry; and

(b) exercises, in relation to the inquiry, a power under this Act,  
that interest shall be disclosed in any report that relates to the inquiry and in which the member participates.

(8) In sub-sections (6) and (7), “member” includes an associate member.

### **Resignation**

**14. (1)** A member may resign his office by writing signed by him delivered to the Governor-General.

(2) An associate member may resign his office by writing signed by him delivered to the Minister.

### **Termination of appointment**

**15. (1)** The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.

(2) If a member—

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

(b) fails to comply with section 13; or

(c) being a full-time member—

(i) engages in paid employment outside the duties of his office otherwise than with the consent of the Minister; or

(ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months,

the Governor-General shall terminate the appointment of the member.

(3) The Minister may terminate the appointment of an associate member by reason of misbehaviour or physical or mental incapacity.

(4) If an associate member—

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

(b) fails to comply with section 13,

the Minister shall terminate the appointment of the associate member.

### **Meetings of Authority**

**16. (1)** Subject to this section, the Chairman shall convene such meetings as he thinks necessary for the efficient performance of the functions of the Authority.

(2) Meetings shall be held at such places as the Chairman determines.

(3) The Chairman shall preside at all meetings at which he is present.

(4) In the absence of the Chairman from a meeting a member nominated for the purpose by the Chairman shall preside.

(5) Subject to this Act and to any direction given to the Authority by the Minister under sub-section 18 (4), the member presiding at a meeting may give directions regarding the procedure to be followed at or in connection with the meeting.

(6) At a meeting—

(a) 3 members form a quorum;

(b) all questions shall be decided by a majority of votes of the members present and voting; and

(c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) The Authority shall keep records of its meetings.

## **PART III—FUNCTIONS OF AUTHORITY**

### **Functions of Authority**

**17. (1)** The functions of the Authority are—

(a) to consider notices given to the Authority under paragraph 22 (2) (a) and to take in relation to such notices such action in accordance with this Part as it considers appropriate; and

(b) to hold inquiries in accordance with this Part into matters relating to prices for the supply of goods or services, and to report to the Minister the results of each such inquiry.

(2) The Authority shall hold such inquiries as it is required to hold by instrument given by the Minister under section 18 and may, with the approval of the Minister under section 18, hold such other inquiries as it thinks fit.

(3) In exercising its powers and performing its functions under this Act, the Authority shall, subject to any directions under section 20, have particular regard to—

(a) the need to maintain investment and employment, including the influence of profitability on investment and employment;

(b) the need to discourage a person who is in a position substantially to influence a market for goods or services from taking advantage of that power in setting prices; and

- (c) the need to discourage cost increases arising from increases in wages and changes in conditions of employment inconsistent with principles established by relevant industrial tribunals.

**Powers of Minister in relation to inquiries**

**18. (1)** The Minister may, by instrument in writing delivered to the Chairman—

- (a) require the Authority to hold an inquiry into a specified matter or specified matters; or
- (b) approve the holding by the Authority of an inquiry into a specified matter or specified matters.

**(2)** An instrument under sub-section (1)—

- (a) shall specify—
  - (i) the description of the goods or services in relation to which the inquiry is to be held; and
  - (ii) whether the inquiry is to be held in relation to the supply of goods or services of that description by a particular person or persons; and
- (b) may, if the inquiry is to be held in relation to the supply of goods or services of that description by a particular person or persons, specify the particular person or persons.

**(3)** Where an instrument under sub-section (1) states that an inquiry is to be held in relation to the supply of goods or services of a particular description by a particular person or persons, but does not specify the particular person or persons, the Authority shall determine the person or persons in relation to whom the inquiry will be held, and the Chairman shall give notice in writing of the determination to the Minister.

**(4)** The Minister may, in an instrument under sub-section (1), give such directions as he thinks fit as to the holding of the inquiry to which the instrument relates or the matters to be taken into consideration in that inquiry.

**(5)** An instrument under sub-section (1) shall specify the period within which the inquiry to which the instrument relates is to be completed and a report on the inquiry submitted, and, subject to sub-section (6), the Authority shall complete the inquiry and submit such a report within that period.

**(6)** The Minister may, before the expiration of the period within which the Authority is required by sub-section (5) or by this sub-section, as the case may be, to complete an inquiry and to submit its report on the inquiry, extend, or further extend, as the case requires, that period by instrument in writing delivered to the Chairman, and, if the Minister does so, the Authority shall complete the inquiry and submit the report within that period as so extended, or further extended, as the case may be.

**Authority to give notice in relation to inquiries**

**19. (1)** Where the Authority is to hold an inquiry, the Authority shall, as soon as practicable and in any case before it commences to hold the inquiry—

- (a) give reasonable notice in each State and internal Territory, by advertisement published in the *Gazette* and in a newspaper circulating in that State or Territory, as the case may be, that it is to hold the inquiry and specifying the matter or matters in relation to which the inquiry is to be held and the time and place at which the inquiry is to commence; and
- (b) if the inquiry is to be held in relation to the supply of goods or services by a particular person or persons—serve on the person, or on each of the persons, as the case may be, a notice in writing stating that the Authority is to hold the inquiry and specifying the matter or matters in relation to which the inquiry is to be held and the time and place at which the inquiry is to commence.

**(2)** Where—

- (a) an inquiry is being held in relation to the supply of goods or services of a particular description by a particular person or persons; and
- (b) the Minister, pursuant to sub-section 18 (6), extends, or further extends, the period within which the inquiry is required to be completed and a report on the inquiry submitted,

the Authority shall forthwith serve on the person, or on each of the persons, as the case may be, a notice in writing giving particulars of the extension or further extension.

**Directions of Minister as to special considerations**

**20.** The Minister may, by instrument in writing delivered to the Chairman, direct the Authority to give special consideration, in exercising its powers and performing its functions under this Act, to the matter or matters specified in the instrument, and the Authority shall comply with such a direction.

**Declarations by Minister or Authority**

**21. (1)** The Minister, or the Authority with the approval of the Minister, may by instrument in writing published in the *Gazette*—

- (a) declare goods or services of a specified description to be notified goods or services for the purposes of this Act;
- (b) declare a person to be, in relation to goods or services of a specified description, a declared person for the purposes of this Act; or
- (c) declare a supply of goods or services of a specified description, being a supply in a specified manner, of a specified kind or in specified circumstances, to be an exempt supply for the purposes of this Act.

**(2)** The Minister, or the Authority with the approval of the Minister, may by instrument in writing published in the *Gazette* revoke or vary a declaration under sub-section (1).

**Notification to Authority of proposed increases in prices of goods or services**

**22. (1)** Subject to sub-section (2), a person who is a declared person in relation to goods or services of a particular description, being notified goods or services, shall not supply goods or services of that description in a locality on particular terms and conditions—

- (a) if the person has previously supplied goods or services of that description in that locality on the same or substantially similar terms and conditions—at a price exceeding the highest price at which the person has previously supplied goods or services of that description in that locality on the same or substantially similar terms and conditions;
- (b) if the person has not previously supplied goods or services of that description in that locality on the same or substantially similar terms and conditions, but has previously supplied goods or services of that description elsewhere in Australia on the same or substantially similar terms and conditions—at a price exceeding the highest price at which the person has previously supplied goods or services of that description in Australia on the same or substantially similar terms and conditions; or
- (c) if the person has not previously supplied goods or services of that description in Australia on the same or substantially similar terms and conditions.

Penalty: \$10,000.

**(2)** Sub-section (1) does not prohibit a person from supplying goods or services of a particular description in a locality on particular terms and conditions (in this sub-section referred to as the “relevant terms”) at a particular price (in this sub-section referred to as the “relevant price”) if—

- (a) the person has given to the Authority a notice in writing stating that the person proposes to supply goods or services of that description in that locality on specified terms and conditions (in this sub-section referred to as the “proposed terms”) at a specified price (in this sub-section referred to as the “proposed price”);
- (b) the event or events referred to in one of the following sub-paragraphs has or have occurred:
  - (i) the prescribed period in relation to the notice referred to in paragraph (a) has expired;
  - (ii) the Authority has served notice in writing on the person stating that the Authority has no objection to the person supplying goods or services of that description in that locality on the proposed terms at the proposed price;
  - (iii) the Authority has served a notice in writing on the person stating that the Authority would have no objection to the person supplying goods or services of that description in that locality on the proposed terms at a specified price, being a price that is lower than the proposed price, and the person has, not later than 7 days after service on the person of the notice by the

Authority, given to the Authority a further notice stating that the person proposes to supply goods or services of that description in that locality on the proposed terms at a price not exceeding the price specified in the notice by the Authority;

- (c) the relevant terms are the same as, or substantially similar to, the proposed terms; and
- (d) the relevant price does not exceed—
  - (i) in a case to which sub-paragraph (ii) does not apply—the proposed price; or
  - (ii) if both of the events referred to in sub-paragraph (b) (iii) have occurred—the price specified in the notice first referred to in that sub-paragraph.

(3) Sub-section (1) does not apply in relation to a supply of goods or services of a particular description that is an exempt supply in relation to goods or services of that description.

(4) Where a person has given a notice to the Authority under paragraph (2) (a) (in this sub-section referred to as the “original notice”) specifying a price—

- (a) the person may (whether or not he has previously given to the Authority a notice under this sub-section in relation to the original notice) give to the Authority a further notice stating that the original notice is to have effect as if there were substituted for the price specified in the original notice such price (being a price lower than the price specified in the original notice and lower than the price specified in any previous notice under this sub-section in relation to the original notice) as is specified in the further notice; and
- (b) if a further notice is so given by the person, the original notice has effect accordingly.

(5) For the purposes of this section, the prescribed period in relation to a notice given to the Authority under paragraph (2) (a) is, subject to sub-sections (6) and (7), the period of 21 days commencing on the day on which the notice was so given.

(6) The Authority may, with the consent of a person who has given a notice to the Authority under paragraph (2) (a), determine, before the expiration of the period of 21 days referred to in sub-section (5), that the prescribed period in relation to the notice for the purposes of this section shall be a specified longer period and, in that case, a reference to that longer period shall, for the purposes of the application of that sub-section in relation to the notice, be deemed to be substituted in that sub-section for the reference to the period of 21 days.

(7) Where the Authority has served a notice on a person under sub-paragraph (2) (b) (iii) in relation to a notice given by the person to the Authority under paragraph (2) (a) then, for the purposes of the application of sub-section (5) in relation to the second-mentioned notice, the reference in that sub-section to the period of 21 days, or, if a reference to a longer period is to be

deemed, by virtue of sub-section (6), to be substituted in sub-section (5), the reference to that longer period, shall be deemed to be a reference to the period of 21 days, or to that longer period, as the case may be, increased by a further period of 14 days.

**Authority to keep register of, and to publish, outcomes of consideration of notices**

**23. (1)** The Authority shall keep, at such place as the Authority determines, a register for the purposes of this section.

**(2)** Where a person has given a notice (in this sub-section referred to as the “relevant notice”) to the Authority under paragraph 22 (2) (a), the Authority shall—

(a) as soon as practicable after the prescribed time in relation to the relevant notice, include in the register—

(i) a copy of the relevant notice, being a copy on which has been endorsed, or to which has been attached, a statement indicating the outcome of the consideration by the Authority of the relevant notice, including any action taken by the Authority in relation to the relevant notice and the outcome of any such action; and

(ii) a copy of each notice given or served under this Act to or by the Authority in relation to the relevant notice; and

(b) within 3 months after the prescribed time in relation to the relevant notice, cause to be published in the *Gazette* a notice—

(i) stating that the relevant notice has been received by the Authority and specifying the date on which it was so received; and

(ii) setting out such particulars (if any) relating to the outcome of the consideration by the Authority of the relevant notice as the Authority considers appropriate.

**(3)** A person may, at any time during ordinary office hours in the place where the register is kept, inspect or make copies of, or take extracts from, the register.

**(4)** The validity of an act done by the Authority in relation to a notice given to the Authority under paragraph 22 (2) (a) is not affected by a failure of the Authority to comply with this section.

**(5)** In this section—

“prescribed time”, in relation to a notice given to the Authority under paragraph 22 (2) (a), means the time at which expires the period that is, for the purposes of section 22, the prescribed period in relation to the notice;

“register” means the register kept for the purposes of this section.



**Prices of goods or services not to be increased pending inquiry**

**24. (1)** Where the Authority serves on a person, pursuant to paragraph 19 (1) (b), a notice stating that the Authority is to hold an inquiry in relation to the supply by the person of goods or services of a particular description, the person shall not, before the prescribed day in relation to the notice, supply goods or services of that description in a locality on particular terms and conditions—

- (a) if the person has previously supplied goods or services of that description in that locality on the same or substantially similar terms and conditions—at a price exceeding the highest price at which the person has previously supplied goods or services of that description in that locality on the same or substantially similar terms and conditions;
- (b) if the person has not previously supplied goods or services of that description in that locality on the same or substantially similar terms and conditions, but has previously supplied goods or services of that description elsewhere in Australia on the same or substantially similar terms and conditions—at a price exceeding the highest price at which the person has previously supplied goods or services of that description in Australia on the same or substantially similar terms and conditions; or
- (c) if the person has not previously supplied goods or services of that description in Australia on the same or substantially similar terms and conditions.

Penalty: \$10,000.

**(2)** For the purposes of sub-section (1), the prescribed day in relation to a notice served by the Authority on a person pursuant to paragraph 19 (1) (b) is the fourteenth day after whichever is the earlier of the following days:

- (a) the day on which a copy of the report by the Authority on the inquiry to which the notice relates is received by the person; or
- (b) the last day of the period within which the Authority is required by sub-section 18 (5) or (6), as the case requires, to complete the inquiry to which the notice relates and to submit its report on the inquiry.

**(3)** This section has effect subject to section 25.

**Interim price increases**

**25. (1)** Where the Authority has served, or proposes to serve, a notice on a person pursuant to paragraph 19 (1) (b), the Authority may at any time, on its own initiative or on the application of the person, give to the person a notice in writing stating that the person is permitted, from a specified date until the day that is, for the purposes of sub-section 24 (1), the prescribed day in relation to the first-mentioned notice, to supply goods or services of a specified description in a specified locality on specified terms and conditions at a price not exceeding a specified price.

**(2)** Where a notice given to a person under sub-section (1) is in force, the person is not guilty of an offence against section 24 by reason only that the person supplies goods or services of the description specified in the notice in the

locality so specified on the terms and conditions so specified, or on terms and conditions that are the same as, or substantially similar to, those terms and conditions, at a price not exceeding the price so specified.

### **Report by Authority**

**26.** Where the Authority submits to the Minister a report on an inquiry, the Authority shall—

- (a) in the case of an inquiry held in relation to the supply of goods or services by a particular person or persons—
  - (i) send a copy of the report to the person, or to each of those persons, as the case may be, on the day on which it submits the report to the Minister; and
  - (ii) as soon as practicable after the person, or each of the persons, as the case may be, has received a copy of the report, make copies of the report available for inspection by the public; or
- (b) in any other case—as soon as practicable after it has submitted the report to the Minister, make copies of the report available for inspection by the public.

### **Obligation to notify price following receipt of report**

**27. (1)** Where a person receives a copy of a report on an inquiry held by the Authority in relation to the supply by the person of goods or services of a particular description—

- (a) the person shall, within 14 days after receiving the copy of the report, give notice in writing to the Authority specifying the price or prices at which the person is supplying, or proposes to supply, goods or services of that description; and
- (b) the Authority shall, within 14 days after it receives the notice under paragraph (a), make available to the public particulars of the price or prices specified in the notice.

**(2)** A person who fails to comply with paragraph (1) (a) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

### **Withdrawal of notices by Authority**

**28.** The Authority may, by notice in writing served on a person, withdraw a notice previously served by the Authority on the person under this Act (other than this section) and, where the Authority does so, this Act has effect, as from the time at which the first-mentioned notice is served on the person, as if the other notice had not been served on the person.

### **Delegation to member of function and powers relating to consideration of notices**

**29. (1)** The Authority may, by resolution, delegate to a member—

- (a) in relation to a specified notice given to the Authority under paragraph 22 (2) (a), in relation to notices included in a specified class of notices

given to the Authority under paragraph 22 (2) (a) or in relation to all notices given to the Authority under paragraph 22 (2) (a)—

- (i) the function of the Authority referred to in paragraph 17 (1) (a); and
  - (ii) the powers of the Authority under sub-paragraphs 22 (2) (b) (ii) and (iii); and
- (b) in relation to a notice served by the member in the exercise, pursuant to the delegation, of a power referred to in sub-paragraph (a) (ii), the power of the Authority under section 28,

and where the Authority does so, that function, or any of those powers, when performed or exercised by the member, shall, for the purposes of this Act, be deemed to have been performed or exercised by the Authority.

(2) A delegation under this section—

- (a) may be revoked by resolution of the Authority (whether or not constituted by the persons constituting the Authority at the time of the delegation);
- (b) does not prevent the performance or exercise by the Authority of the function, or any of the powers, delegated; and
- (c) continues in force notwithstanding a change in the membership of the Authority.

(3) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this section as if the Authority were a person.

### **Chairman may authorize Authority to sit in Divisions**

**30. (1)** The Chairman may, by writing signed by him, determine that, for the purposes of a specified inquiry and report, the powers of the Authority under this Act may be exercised by a Division of the Authority constituted by a specified member or specified members.

(2) Where the Chairman has made a determination under sub-section (1), he may, by writing signed by him, at any time before the Division of the Authority specified in the determination has completed the inquiry and report so specified, revoke the determination or amend the determination in relation to the membership of the Division or in any other respect, and, where the membership of a Division of the Authority is changed, the Division as constituted after the change may complete the inquiry and report for the purposes of which the Division was constituted.

(3) For the purposes of an inquiry and report specified in a determination made under sub-section (1), the Authority shall be deemed to consist of the Division of the Authority specified in the determination.

(4) At a meeting of a Division of the Authority constituted by 2 or more members—

- (a) if the Chairman is a member of the Division and is present at the meeting—the Chairman shall preside;

- (b) if the Chairman is not a member of the Division, and a member of the Division nominated by the Chairman to preside at meetings of the Division is present at the meeting—that member shall preside; and
- (c) in any other case—a member of the Division nominated by the Chairman to preside at that meeting shall preside.

(5) Notwithstanding section 16, at a meeting of a Division of the Authority constituted by 3 or more members, 2 members form a quorum.

(6) A Division of the Authority may sit and exercise powers of the Authority under this Act notwithstanding that another Division of the Authority is sitting and exercising powers of the Authority at the same time.

### **Procedure at inquiries**

**31. (1)** Subject to a direction given to the Authority by the Minister, the Authority shall hold an inquiry in public.

(2) Where, at an inquiry held in public, a witness objects to giving in public evidence that the Authority is satisfied is of a confidential nature, the Authority may take that evidence in private if it considers that it is desirable to do so.

(3) In an inquiry, the Authority may, if it thinks fit, permit a person appearing as a witness at the inquiry to give evidence by tendering, and verifying by oath or affirmation, a written statement and, where evidence is so given in an inquiry held in public, the Authority shall make available to the public in such manner as the Authority thinks fit the contents of the statement other than any matter—

- (a) that the person who gave the evidence objects to being made public; and
- (b) the evidence of which the Authority is satisfied would have been taken in private if that evidence had been given orally and the witness had objected to giving it in public.

(4) In an inquiry, the Authority may, if it thinks fit, require or permit a person desiring to make a submission to the Authority to make the submission in writing and, where a submission is so made in an inquiry held in public, the Authority shall make available to the public in such manner as the Authority thinks fit the contents of the submission.

(5) Subject to sub-section (6), in an inquiry—

- (a) the procedure to be followed is within the discretion of the member presiding at the inquiry; and
- (b) the Authority is not bound by the rules of evidence.

(6) Sub-section (5) operates subject to this Act and—

- (a) in any case—subject to any direction given to the Authority by the Minister; and
- (b) in the case of an inquiry at which a member other than the Chairman is presiding—subject to any direction given to that member by the Chairman.

**Power to obtain information**

**32. (1)** The Chairman may, by notice in writing signed by him and served on a person, require the person—

- (a) to furnish to the Authority, by writing signed by the person or his agent, or, in the case of a Commonwealth authority or a body corporate, by a competent officer of the Commonwealth authority or body corporate, within the time and in the manner specified in the notice, such information in relation to the affairs of the person as is so specified; or
- (b) to produce to the Authority, in accordance with the notice, such documents in relation to the affairs of the person as are specified in the notice,

being information that is, or documents that are, relevant to—

- (c) the consideration by the Authority of the matters contained in a notice given to the Authority by the person under paragraph 22 (2) (a);
- (d) an inquiry that is being held in relation to the person; or
- (e) a supply of goods or services by the person, being a supply of a kind in relation to which this Act applies.

**(2)** A person shall not—

- (a) without reasonable excuse, refuse or fail to comply with a notice under sub-section (1); or
- (b) in purported compliance with such a notice, knowingly furnish information that is false or misleading.

Penalty: \$1,000.

**(3)** Subject to section 33, where, pursuant to a notice served on a person under sub-section (1) in relation to information that is, or documents that are, relevant to an inquiry that is being held in public in relation to the person, the person furnishes information or produces documents to the Authority in connection with the inquiry, the Authority shall make the information or documents available to the public in such manner as the Authority thinks fit.

**Confidential information**

**33.** Notwithstanding anything contained in sections 31 and 32, where—

- (a) a person claims that information (in this section referred to as the “relevant information”)—
  - (i) made available, or to be made available, by or on behalf of the person (whether in oral evidence or in a written statement, submission or other document) at the hearing of an inquiry; or
  - (ii) furnished, or contained in a document produced, by the person in accordance with section 32,

is information the disclosure of which would damage the competitive position of the person; and

- (b) the Authority is satisfied that the claim is justified and is not of the opinion that disclosure of the relevant information is necessary in the public interest,

the Authority shall take all reasonable steps to ensure that the relevant information is not, without the consent of the person, disclosed, in the proceedings or by the Authority, to a person other than—

- (c) a member or associate member; or
- (d) a member of the staff of the Authority who receives the relevant information in the course of his duties.

**Power to take evidence on oath or affirmation**

**34. (1)** In an inquiry, the Authority may take evidence on oath or affirmation and, for that purpose, a member may administer an oath or affirmation.

**(2)** The Chairman may, for the purposes of this Act, by writing signed by him, summon a person to appear at an inquiry to give evidence and to produce such documents (if any) as are referred to in the summons.

**(3)** The power conferred on the Chairman by sub-section (2) may, in the discretion of the Chairman, be exercised on the application of another person.

**Failure of witness to attend**

**35.** A person served with a summons to appear as a witness at an inquiry shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by a member.

Penalty: \$1,000.

**Refusal to be sworn or to answer question**

**36.** A person appearing as a witness at an inquiry shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation;
- (b) refuse or fail to answer a question that he is required to answer by the member presiding at the inquiry; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under this Part served on him.

Penalty: \$1,000.

**Protection of members and witnesses**

**37. (1)** A member or associate member has, in the performance of his duty as a member or associate member, the same protection and immunity as a Justice of the High Court.

**(2)** Subject to this Act, a person summoned to attend or appearing as a witness at an inquiry 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.

**Powers of Authority in relation to documents produced**

**38. (1)** A member, or a member of the staff of the Authority, may inspect documents—

- (a) furnished to the Authority for the purposes of the exercise of its powers or the performance of its functions under this Act; or
- (b) produced at an inquiry,

and may make copies of, or take extracts from, those documents.

**(2)** An associate member may inspect documents—

- (a) furnished to the Authority for the purposes of the exercise of its powers or the performance of its functions under this Act in relation to the inquiry for the purposes of which the associate member was appointed; or
- (b) produced at that inquiry,

and may make copies of, or take extracts from, those documents.

**(3)** Documents furnished or produced as mentioned in sub-section (1) or (2) may be retained by the Authority for such reasonable period as the Authority thinks fit.

**Allowances to witnesses**

**39.** A witness summoned under this Act to appear at an inquiry is entitled to be paid—

- (a) in a case where the witness was summoned on the application of a person—by that person; or
- (b) in any other case—by the Commonwealth,

such allowances for his travelling and other expenses as are prescribed.

**PART IV—MISCELLANEOUS**

**Prosecutions**

**40. (1)** A prosecution for an offence against this Act shall be instituted only in the Federal Court of Australia.

**(2)** Jurisdiction is conferred on the Federal Court of Australia with respect to offences against sections 22, 24, 27, 32, 35, 36 and 43.

**(3)** The jurisdiction of the Federal Court of Australia under this section may be exercised by a single Judge.

**(4)** A prosecution for an offence against this Act shall not be instituted except with the consent in writing of the Minister.

### **Staff**

**41. (1)** The staff required to assist the Authority in the performance of its functions shall be persons appointed or employed under the *Public Service Act 1922*.

**(2)** The Chairman has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922*, so far as relates to the branch of the Australian Public Service comprising the staff referred to in sub-section (1), as if that branch were a separate Department of the Australian Public Service.

**(3)** The use by members and associate members of the services of the staff referred to in sub-section (1) is subject to the control of the Chairman.

### **Engagement of consultants**

**42. (1)** The Authority may, on behalf of the Commonwealth, with the approval of the Public Service Board, engage persons to furnish advice to, or perform services for, the Authority otherwise than as members of the staff referred to in sub-section 41 (1).

**(2)** The terms and conditions of engagement of persons engaged under sub-section (1) shall be such as are, with the approval of the Public Service Board, determined by the Authority.

### **Secrecy**

**43. (1)** A prescribed person shall not, either directly or indirectly, except in or in connection with the performance of a duty or function under or in connection with this Act—

- (a)** make a record of, or divulge or communicate to any person, information acquired by reason of his office or appointment under this Act or in or in connection with the performance of his duties or functions, or the exercise of his powers, under or in connection with this Act, being information in relation to which sub-section (3) applies in relation to the prescribed person; or
- (b)** produce to any person a document—
  - (i)** supplied to, lodged with or otherwise acquired by, the Authority for the purposes of this Act; or
  - (ii)** transferred to the Authority as required by section 50, other than a document made available to the public by the Authority pursuant to a provision of this Act.

Penalty: \$1,000.

**(2)** Except where it is necessary to do so for the purposes of this Act—

- (a)** a prescribed person shall not be required to divulge or communicate to a court any information in relation to which sub-section (3) applies in relation to the prescribed person; and
- (b)** a person shall not be required to produce in a court a document in relation to which paragraph (1) (b) applies.



(3) This sub-section applies in relation to information in relation to a prescribed person if, and only if—

- (a) the information was disclosed to the prescribed person by a person, or was obtained by the prescribed person from a person, for the purposes of this Act or as permitted by section 51; or
- (b) the information was divulged or communicated to the prescribed person by another prescribed person and this sub-section applies in relation to the information in relation to the other prescribed person,

and the information has not been made available to the public by the Authority pursuant to a provision of this Act and is not information contained in oral evidence given in public at the hearing of an inquiry.

(4) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“prescribed person” means a person who is or has been—

- (a) a member or an associate member;
- (b) a member of the staff of the Authority; or
- (c) an officer or employee as defined in sub-section 7 (1) of the *Public Service Act 1922*;

“produce” includes permit access to.

### **Annual report**

**44. (1)** The Authority shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report describing—

- (a) the operations of the Authority during the year that ended on that date; and
- (b) the results during that year of the operations of the Authority.

(2) The Minister shall cause a copy of a report furnished to him under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by him.

### **Regulations**

**45. (1)** The Governor-General may make regulations, not inconsistent with this Act, prescribing 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.

(2) Regulations providing for allowances and expenses for the purposes of section 39 may provide for those allowances and expenses by reference to a scale of expenses for witnesses who attend before a court specified in the regulations.

## **PART V—REPEAL OF PETROLEUM PRODUCTS PRICING ACT 1981**

### **Interpretation**

**46.** In this Part—

“former Authority” means the Petroleum Products Pricing Authority;

“repealed Act” means the *Petroleum Products Pricing Act 1981* as amended and in force immediately before the commencement of this Act;

“Statutes Review Act” means the *Commonwealth Functions (Statutes Review) Act 1981*.

### **Repeal**

**47.** The *Petroleum Products Pricing Act 1981* is repealed.

### **Report of operations of former Authority**

**48.** The Minister shall, as soon as practicable after the commencement of this Act, cause to be prepared a report of the operations of the former Authority during the period that commenced at the expiration of the last period in respect of which a report of the operations of the former Authority was furnished to the Minister and ended immediately before the commencement of this Act and shall cause a copy of the first-mentioned report to be laid before each House of the Parliament as soon as practicable after the first-mentioned report is prepared.

### **Transfer of funds**

**49.** Where an Act appropriates moneys for the purposes of, or in connection with the activities of, the Petroleum Products Pricing Authority, references in that Act to the Petroleum Products Pricing Authority shall, after the commencement of this Act, be read as references to the Prices Surveillance Authority.

### **Transfer of records**

**50.** The Minister shall, as soon as practicable after the commencement of this Act, cause to be transferred to the Authority—

- (a) the records of the former Authority and the records of the Prices Justification Tribunal referred to in sub-section 233 (1) of the Statutes Review Act; and
- (b) the records of the Prices Justification Tribunal referred to in sub-section 233 (2) of the Statutes Review Act.

### **Obligations of secrecy**

**51. (1)** Notwithstanding the repeal effected by section 47, the provisions of section 36 of the repealed Act continue to operate in relation to a person who, immediately before the commencement of this Act, was a person to whom that section applied.

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(2) Section 36 of the repealed Act, as continued in operation by sub-section (1), does not prohibit—

- (a) the transfer of records to the Authority as required by section 50; or
- (b) a person from divulging or communicating information or producing a document to—
  - (i) a member or associate member;
  - (ii) a member of the staff of the Authority; or
  - (iii) an officer of the Department.

(3) Section 34A of the *Prices Justification Act 1973*, as continued in operation by sub-section 234 (1) of the Statutes Review Act, does not prohibit—

- (a) the transfer of records to the Authority as required by section 50; or
- (b) a person from divulging or communicating information or producing a document (being information or a document relating to the supply of goods or services) to—
  - (i) a member or associate member;
  - (ii) a member of the staff of the Authority; or
  - (iii) an officer of the Department.