

No. 5 of 1985.

Industry Assistance Board Act 1985.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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ARRANGEMENT OF SECTIONS.

PART I – PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation.
 - “Board”
 - “Chairman”
 - “tariff”
 - “this Act”

PART II – INDUSTRY ASSISTANCE BOARD.

3. Establishment of the Board.
4. Acting members.
5. Chairman.
6. Acting Chairman.
7. Leave of absence.
8. Resignation.
9. Vacation of office.
10. Disclosure of interests.
11. Disclosure of interest in matters considered, etc., by the Board.
12. Meetings.
13. Indemnity of members.
14. Annual reports.
15. Secretariat.

PART III – FUNCTIONS AND POWERS OF INDUSTRY ASSISTANCE BOARD.

16. Functions of the Board.
17. Guidelines.
18. General powers of the Board.
19. Public enquiry.
20. Report.

21. Delegation.
22. Protection of trade secrets.
23. Protection of employees as witnesses.

PART IV – REPEAL.

24. Repeal.
25. Transitional.

PART V – MISCELLANEOUS.

26. Secrecy to be observed.
27. Obstruction.
28. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Industry Assistance Board Act 1985,

Being an Act to establish an Industry Assistance Board and to make provision for its functions, powers and duties, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it restricts or regulates a right or freedom referred to a Subdivision III.3.C of the constitution, namely–

- (a) the right to privacy conferred by Section 49 of the Constitution; and
- (b) the right to freedom of the information conferred by Section 51 of the Constitution,

is a law that is made for that purpose.

(2) For the purposes of Section 29 of the *Organic Law on Provincial Government*, it is hereby declared that this Act relates to a matter of national interest.

2. INTERPRETATION.

In this Act, unless the contrary intention appears–

“**Board**” means the Industry Assistance Board established under Section 3;

“**Chairman**” means the Chairman of the Industry Assistance Board;

“**tariff**” means any duties of customs or excise;

“**this Act**” includes the Regulations.

PART II. – INDUSTRY ASSISTANCE BOARD.

3. ESTABLISHMENT OF THE BOARD.

(1) An Industry Assistance Board is hereby established.

(2) The Board shall consist of not less than seven and not more than 13 members—

(a) who shall be appointed by the Head of State, action on advice, by notice in the National Gazette; and

(b) who shall be appointed to hold office acting on advice, and

(c) each of whom shall have professional or specialist experience in industry, finance, trade or economic administration; and

(d) of whom approximately—

(i) one third shall be public officers or employees of statutory bodies; and

(ii) one third shall be employed in privatesector agencies engaged in activities within Papua New Guinea or in organizations set up by such agencies; and

(iii) one third shall be persons other than personsreferred to in Sub-paragraphs (1) and (11).

(3) The members of the Board shall be paid such fees (if any) and allowances (if any) as the Minister determines.

(4) The performance of functions or the exercise of powers of the Board shall not be affected by reason only of there being a vacancy on the Board.

4. ACTING MEMBERS.

(1) Where, at any time, the number of members of the Board falls below seven, the Minister may appoint a person to be an acting member of the Board.

(2) An appointment under Subsection (1) shall be for a period not exceeding six months.

(3) An acting member of the Board may exercise all the powers of and discharge the functions of a member of the Board.

5. CHAIRMAN.

(1) The Head of State, acting on advice, shall appoint one of the members of the Board to be Chairman of the Board.

(2) The Chairman is responsible for ensuring the efficient and orderly conduct of the business of the Board.

6. ACTING CHAIRMAN.

(1) Where—

- (a) the Chairman is absent temporarily; or
- (b) there is a vacancy in the office of Chairman,

the Minister may appoint one of the members of the Board to act as Chairman for a period not exceeding three months.

(2) An Acting Chairman may exercise all the powers of and discharge all the functions of the Chairman.

7. LEAVE OF ABSENCE.

The Chairman may grant leave of absence to a member of the Board on such terms and conditions as he determines.

8. RESIGNATION.

A member of the Board may resign his office by writing signed by him and delivered to the Minister.

9. VACATION OF OFFICE.

If a member of the Board—

- (a) is absent, except on leave of absence granted by the Chairman, for three consecutive meetings of the Board, or
- (b) becomes permanently incapable of performing his duties; or
- (c) becomes bankrupt, applies to take the benefit of any law for relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (d) resigns his office in accordance with Section 8; or
- (e) fails to comply with his obligations under Sections 10, and 11,

the Head of State, acting on advice, may terminate his appointment.

10. DISCLOSURE OF INTERESTS.

Before taking up his duties as a member of the Board and from time to time as the circumstances require, a person appointed to be a member of the Board shall give written notice to the Minister of all direct and indirect pecuniary interests in any business carried on in Papua New Guinea or elsewhere or in any body corporate carrying on business in Papua New Guinea or elsewhere.

11. DISCLOSURE OF INTEREST IN MATTERS CONSIDERED, ETC., BY THE BOARD.

(1) A member of the Board who has a direct or indirect interest in a matter being considered or about to be considered by the Board, otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 members and of which he is not a director, shall as soon as the relevant facts have come to his knowledge, declare his interest at a meeting of the Board.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Board, and the member—

- (a) shall not take part, after the disclosure, in any deliberation or decision of the Board in relation to that matter; and
- (b) shall be disregarded for the purposes of constituting a quorum of the Board in that deliberation or decision.

12. MEETINGS.

(1) The Board shall hold such meetings as are necessary for the purposes of its functions, but in any event shall meet not less than once in any period of six months.

(2) The Chairman, or in his absence the Acting Chairman, may, at any time, convene a meeting of the Board.

(3) Where the Minister requests the Chairman or the Acting Chairman to convene a meeting of the Board, the Chairman or the Acting Chairman, as the case may be, shall do so.

(4) At a meeting of the Board, the Chairman or the Acting Chairman and five members of the Board constitute a quorum.

(5) The Chairman or the Acting Chairman, as the case may be, shall preside at a meeting of the Board.

(6) Questions arising at a meeting of the Board shall be decided by a majority of the members present and voting, and the Chairman or Acting Chairman, as the case may be, shall have a deliberate, and in the event of an equality of votes, also a casting vote.

(7) Subject to this Act, the procedures of the Board are as determined by the Board.

13. INDEMNITY OF MEMBERS.

A member of the Board is not personally liable for any act of the Board, or of a member acting as such, done in good faith.

14. ANNUAL REPORTS.

(1) The Board shall, before 31 March in each year, prepare and give to the Minister for presentation to the National Parliament, a report on the activities of the Board for, in the first instance, the period from the date of coming into operation of this Act until the 31 December following the date of coming into operation of this Act, and thereafter for the year ending on the preceding 31 December.

(2) A report under Subsection (1) shall summarise the cases examined and reported on, discuss trends in industry assistance and assess the effectiveness of such assistance in relation to the goals in this connection as stated by the National Executive Council.

15. SECRETARIAT.

The secretariat of the Board shall be in the Department for administrative purposes.

PART III. – FUNCTIONS AND POWERS OF INDUSTRY ASSISTANCE BOARD.

16. FUNCTIONS OF THE BOARD.

(1) The functions of the Board are to enquire into and report to the Minister on such matters relating to–

- (a) the general level of protection to be given to manufacturing industries; and
- (b) the specific primary or secondary industries which need infant industry protection at any given time; and
- (c) the method and level of tariffs needed to protect infant industries from import competition; and
- (d) the imposition or removal of tariffs on goods of particular description imported into Papua New Guinea; and
- (e) the imposition of import ban or restriction on imports of goods of particular description into Papua New Guinea; and
- (f) temporary assistance measures to be given to industries in order to overcome the problem of market disruption caused by the rapid increase in the volume of imports or by dumping; and
- (g) the assistance to be provided to specific companies in areas such as tariff protection, import ban and other forms of assistance, including financial assistance, needed to create domestic production capability; and
- (h) the review of assistance as referred to in Paragraph (g) previously given; and
- (i) any requests for new or amended protection under Subsection (2); and
- (j) any other assistance measures relating to primary or secondary industries, including subsidies and tax concessions to industries in the primary, secondary and tertiary sectors,

as are referred to it by the Minister.

(2) Where the Minister receives a request from any person for new or amended protection for any industry or goods, he shall refer the request to the Board.

(3) In the performance of its functions under Subsection (1), the Board shall have regard to–

- (a) the desire of the National Executive Council, in pursuing the general objectives of the national economic development strategy and industrial development policy to use national resources effectively so as to promote economic growth combined with social stability, to diversify the economic base of the country, and to promote primary, secondary and tertiary industrial capability on an efficient and competitive basis; and

- (b) any guidelines under Section 17.

17. GUIDELINES.

The Head of State, acting on advice, may from time to time, issue to the Board written guidelines as to matters to which the board shall have regard in the performance of its functions, and may list priorities in such guidelines.

18. GENERAL POWERS OF THE BOARD.

(1) For the purposes of the exercise and performance of its functions, the Board may—

- (a) subject to Section 19, examine the matters referred to it by—
 - (i) research and study; or
 - (ii) public enquiry; or
 - (iii) both research and study and public enquiry; and
- (b) summon witnesses, by instrument under the hand of the Chairman; and
- (c) take evidence on oath or affirmation and administer oaths and affirmations for the purpose; and
- (d) by instrument under the hand of the Chairman, require a person to produce a document, book or paper in his possession or control; and
- (e) inspect any document, book or paper before it; and
- (f) retain any such document, book or paper for a reasonable time; and
- (g) make copies of such matter as is relevant to the inquiry from, or take extracts from, any such document, book or paper.

(2) A person who, when summoned or required under this section to give evidence or to produce a document, book or paper in his possession or control, fails without reasonable excuse (proof of which is on him)—

- (a) to attend before the Board at the time and place appointed in the summons; or
- (b) to be sworn or make affirmation; or
- (c) to answer any question put to him by a member of the Board; or
- (d) to produce any document; book or paper,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) It is a defence to a charge of an offence against Subsection (2) for failing without reasonable excuse to produce a document, book or paper, or to answer a question, if the defendant proves that the document, book or paper or question was not relevant to the matter in connection with which the production or answer was required.

19. PUBLIC ENQUIRY.

(1) The Minister may, in relation to any matter referred to the Board, order that a public enquiry be held and the Board shall comply with such order.

(2) Where a public enquiry is to be held in accordance with an order under Subsection (1) or with a decision of the Board, the Board shall—

(a) give reasonable notice to any persons directly interested in the subject matter of the enquiry; and

(b) by public advertisement give reasonable notice,

of the subject matter into which the enquiry is to be held and of the date and time of the enquiry.

20. REPORT.

(1) Where a matter has been referred to the Board, the Board shall, as soon as possible after concluding its examination, submit a report of its findings and recommendations to the Minister who shall submit the report to National Executive Council with any recommendations or comments thereon which the Minister considers necessary.

(2) The National Executive Council is not bound by the findings or recommendations of the Board.

21. DELEGATION.

The Board may, by instrument, delegate to any person all or any of its powers and functions (except this power of delegation) under this Act so that the powers and functions may be exercised by the delegate in relation to the matters or class of matters specified in the delegation.

22. PROTECTION OF TRADE SECRETS.

(1) Nothing in this Act makes it compulsory for a witness before the Board, or any person giving evidence by statutory declaration, to disclose to the Board any secret process of manufacture.

(2) In an inquiry under this Act, objection may be taken by a witness or an interested person that any information (including the contents of a document) given or to be given in evidence relates to a trade secret, or to the business operations, profits or financial position of any person.

(3) Where objection is taken under Subsection (2), the Board shall—

(a) consider in private the objection, and the reasons for the objection; and

(b) determine whether the information be given, and if it may be given—

(i) the terms on which it may be given; and

(ii) whether it is to be given in public or in private.

(4) The Board may order, absolutely or conditionally, that any information to which an objection is taken under Subsection (2) be not published, and if such an order is made, a person who publishes that information, whether in a newspaper or otherwise, contrary to the order is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

23. PROTECTION OF EMPLOYEES AS WITNESSES.

(1) An employer who dismisses an employee from his employment, or prejudices an employee in his employment, because the employee—

(a) appeared before the Board; or

(b) gave evidence before the Board,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a period not exceeding one year.

(2) In a prosecution for an offence against this section, the onus is on the employer to prove that an employee who is shown to be dismissed or prejudiced in his employment was so dismissed or prejudiced for some reason other a reason specified in Subsection (1).

PART IV. – REPEAL.

24. REPEAL.

The *Tariff Advisory Committee Act* (Chapter 121) is repealed.

25. TRANSITIONAL.

Any enquiry commenced under the *Tariff Advisory Committee Act* (Chapter 121) but not completed at the time of the commencement of this Act shall, with the necessary adjustments, be completed as if it were an enquiry under this Act.

PART V. – MISCELLANEOUS.

26. SECRECY TO BE OBSERVED.

A person who acts or who has acted under this Act and who, except in the performance of his duty under this Act, makes a record of, or divulges to any person (other than a person to whom he is authorized by law to divulge it), any information acquired by him in the course of his duty under this Act is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

27. OBSTRUCTION.

A person who, directly or indirectly, hinders or obstructs a person in the exercise of his powers or the performance of his duties under this Act is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

28. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing—

- (a) allowances and expenses to be paid to a witness summoned to appear under this Act and the party by whom the expenses shall be paid; and
- (b) penalties of fines not exceeding K2,000.00 for offences against the regulations.

Office of Legislative Counsel, PNG