

1985

The Parliament of the Commonwealth of Australia

Bounty (Ships) Amendment Bill 1985

Explanatory Memorandum

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

OUTLINE

This Bill proposes to amend the Bounty (Ships) Act 1980 to extend the bounty assistance under that Act to vessels constructed or modified for exportation from Australia.

The extended assistance, which is subject to annual limits of \$6 million in 1984/85 and \$10 million in 1985/86 is proposed to apply to export vessels upon which construction or modification was commenced on or after 10 December 1984.

The Government announced the export proposals on 11 October 1984 as part of a major new package designed to assist the Australian Shipbuilding Industry.

As part of that package the Government also announced the introduction of criteria to be complied with by persons requiring their premises to be registered for the purposes of the Act on or after 10 December 1984. For this purpose clause 13 of the Bill provides for the regulations to prescribe conditions to be met by applicants for registration of their premises.

Also under the provisions of clause 13 the opportunity has been taken to make it clear that the registration provisions apply to persons who arrange or propose to arrange the whole of the construction or modification of bountiable vessels (as defined in section 3 of the Principal Act) to be carried out on their behalf by other persons at premises in Australia (proposed section 10A).

The Bill incorporates a number of clauses which update administrative provisions in the existing Act along similar lines to provisions contained in more recent bounty legislation. In particular clause 5 of the Bill sets out in detail what costs are to be included or excluded in connection with the cost of the construction or modification of a bountiable vessel. At present section 4 of the Principal Act provides that the cost of construction or modification of a bountiable vessel is to be such amount as the Comptroller-General of Customs determines having regard to the factors specified in sub-section 4(2).

Financial Impact Statement

The cost of the extended bounty assistance to ships built for export has been set, by the provisions of clause 8, at a maximum of \$6 million in the period 10 December 1984 to 30 June 1985 and \$10 million in the financial year commencing on 1 July 1985.

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NOTES ON CLAUSES

Short Title

Clause 1 is a formal machinery clause.

Commencement

Clause 2 provides for the amending Act to commence on the day on which it receives the Royal Assent.

Heading to Part I

Clause 3 is a technical drafting clause, introducing a new part heading into the Principal Act.

Interpretation

Clause 4 amends Section 3 of the Principal Act to, amongst other things;

- . add definitions for "accounting period" and "approved form; similar to those in Sub-Section 3(1) of the Bounty (Computers) Act 1984;
- . add a number of new definitions consequential upon the introduction of modified or updated provisions proposed later in the Bill;
- . introduce a new definition of shipbuilder to mean a person who;
 - a) carries out the construction or modification of bountiable vessels; or
 - b) arranges for the whole of the construction or modification of bountiable vessels to be carried out on behalf of the person by other persons;
- . introduce a new provision into the Act to provide for the purposes of the Act when two persons are to be associates of each other.

Clause 5 repeals Section 4 of the Principal Act and;

- . introduces a new provision detailing what costs are to be included or excluded for the purposes of ascertaining the cost of the construction or modification of a bountiable vessel;
- . introduces a new provisor into the Principal Act (proposed Section 4A) to enable the Comptroller-General to, in writing, determine the cost of the construction or modification of a vessel where;
 - a) the cost of the construction or modification of the vessel is unable to be verified;

- b) in the opinion of the Comptroller-General, having regard to sound accounting principles, the costs included in the cost of the construction or modification of a bountiable vessel;
- 1) are incorrect or overestimated;
 - 2) are higher than would have been the case if the shipbuilder had not marginally costed or similarly disproportionately costs the construction of a vessel in respect of which bounty is not payable;
 - 3) have been fixed in order to obtain an increase in bounty;
 - 4) are unduly higher than costs incurred by other shipbuilders in respect of similar vessels;
 - 5) have been increased as the result of the influence of a relationship between the shipbuilder and an associate of the shipbuilder; or
 - 6) are higher than would have been the case if the shipbuilder had provided services that were provided, and charged for, by an associate of the shipbuilder; and

introduces a new provision (proposed Section 4B) similar to Section 7 of the Bounty (Computers) Act 1984 specifying that for the purposes of the Principal Act an accounting period of a shipbuilder may be a period of 12 months or such other period as notified by the shipbuilder.

Clause 6 is a technical drafting clause, introducing a new part heading into the Principal Act.

Clause 7 remakes Section 6 of the Principal Act to introduce revised eligibility criteria for the payment of bounty to shipbuilders as a consequence of the proposed new export bounty and introduction of the proposed new concept of prescribed shipbuilder (as to which see proposed Section 10A in clause 13 of the Bill). A prescribed shipbuilder is proposed to be the shipbuilder that arranges for the whole of the construction or modification of bountiable vessels to be carried out on the shipbuilder's behalf by other persons at premises in Australia. The new provisions proposed by clause 7 remove the restriction imposed by the current Section 6(3)(b) that eligibility depend upon use in Australian waters, and provide instead for bounty in respect of the construction or modification of a bountiable vessel to be payable to either a non-prescribed shipbuilder, a prescribed shipbuilder or to other persons (being non-prescribed shipbuilders) who carry out part of the construction or modification of the vessel. In the case of non-prescribed shipbuilders, the payments are to be in such proportions as the Comptroller-General determines in writing. The clause further provides that a shipbuilder is not entitled to receive bounty unless the construction or modification of a vessel is commenced

during a period to which the Act applies. Proposed Section (3C) provides in accordance with Government policy that bounty is not payable in respect of a bountiable vessel constructed or modified by or for the Commonwealth or by an authority of the Commonwealth.

Clause 8 introduces a new provision into the Principal Act (proposed Section 6A) setting limits on the amount of available bounty for export vessels. For the period 10 December 1984 to 30 June 1985, the limit is to be \$6 million, for the financial year commencing on 1 July 1985, \$10 million, and in relation to subsequent financial years, such amount as is prescribed by Regulation. Sub-Section 2 sets out the method under which bounty payments shall be made. Provision is included for the method to be either prescribed by Regulation, or, if no such method is prescribed, on the basis of a deferred payment scheme as set out in that proposed Sub-Section.

Heading to Part III

Clause 9 is a technical drafting clause introducing a new part heading into the Principal Act.

Advances on account of bounty

Clause 10 amends Section 8 of the Principal Act to introduce minor technical drafting changes which;

- . require the terms and conditions of the Minister's approval of an advance on account of bounty to be in writing (proposed paragraph (a));
- . deletes redundant provisions relating to recovery action for overpayments in a court of competent jurisdiction as this is now provided for in the proposed new Section 9F.

Clause 11 repeals Section 9 of the Principal Act and introduces seven new proposed sections dealing with administrative procedures in relation to the bounty along similar lines to the administrative procedures in other recent bounty legislation.

Claims for payment of bounty

Proposed New Section 9

- . This Section sets out the procedures to be followed by a person claiming bounty;
 - such a person is required to :
 - .. lodge a claim for bounty on an approved form, providing such information as is required by the form,

- .. sign and witness the form as required, and
- .. lodge the form with the Collector for the State or Territory in which the construction or modification of the vessel was completed, within 12 months of the day on which the construction or modification of the vessel was completed (proposed Sub-Section 9(2));
- the Comptroller-General is then obliged to examine the claim and either;
 - .. approve the payment of bounty in respect of the vessel to which the claim relates, or,
 - .. refuse to approve such payment (proposed Sub-Section 9(3));
 - .. the above decisions of the Comptroller-General are reviewable by the Administrative Appeals Tribunal (see clause 21),
- the Comptroller-General is obliged to furnish the successful or the unsuccessful claimant a notice in writing setting out the decision (proposed Sub-Section 9(4)).

Variation of inadequate claims

Proposed New Section 9A

- . This Section provides a mechanism for the variation of claims for the payment of bounty where the claimant considers that, by reason of inadvertent error, the original claim is less than what the claimant is entitled to (proposed Sub-Section 9A(1));
- the procedure for the lodgement of a subsequent claim for the balance of bounty which it is considered is owing is identical to the procedure applying to original claims for bounty (see Sub-Section 9(2));
- again, similar to the procedure applying to original claims for bounty, (Sub-Section 9(3)), the Comptroller-General is obliged to examine the further claim for bounty and either;
 - .. approve the further payment of bounty, or refuse to do so (proposed Sub-Section 9A(4));
 - .. the above decisions of the Comptroller-General are reviewable by the Administrative Appeals Tribunal (see clause 21),

- the Comptroller-General is obliged to furnish the successful or unsuccessful claimant a notice in writing setting out the decision (proposed Sub-Section 9A(5)).

Variation of excessive claims

Proposed New Section 9B

- . This Section imposes an obligation on a recipient of bounty to lodge an acknowledgement of error, within 28 days, where the recipient becomes aware that the original claim for bounty exceeds by more than \$100 what the claimant is entitled to (proposed Sub-Section 9B(1));
 - the penalty for contravening Sub-Section (1) is \$1,000;
 - the procedure for the lodgement of an acknowledgement form is similar to that governing original claims (see Sub-Section 9(2));
 - upon examination of the acknowledgement, where the Comptroller-General is satisfied there has been an overpayment by more than \$100, the Comptroller-General shall cause to be served on the claimant a demand for the repayment of the amount of the overpayment (proposed Sub-Section 9B(4));
 - .. the decision of the Comptroller-General for the above purposes is reviewable by the Administrative Appeals Tribunal (see clause 21).

Shipbuilders to furnish return of costs

Proposed New Section 9C

- . This Section imposes an obligation on shipbuilders to furnish returns, within six (6) months of each of their accounting periods, setting out particulars of the costs incurred by them in relation to the construction or modification of bountiable vessels in those periods (proposed Sub-Section 9C(1));
 - the procedure for the lodgement of a return of costs is similar to that governing original claims (see Sub-Section 9(2));
 - the Comptroller-General may require a shipbuilder who furnishes a return to provide a certificate, signed by a qualified accountant approved by the Comptroller-General, to the effect that the particulars set out in the return are correct (proposed Sub-Section 9C(3));

- .. when considering whether a shipbuilder should be requested to furnish a certificate, the Comptroller-General shall have regard to;
 - a) the extent of the claims for bounty made by the shipbuilder during the relevant period,
 - b) the expense of obtaining such a certificate, and
 - c) the relation that expense bears to the claims (proposed Sub-Section 9C(4));
- .. The Comptroller-General shall not refuse to approve a qualified accountant, unless it is considered inappropriate to do so because of an association between the accountant and the shipbuilder (proposed Sub-Section 9C(5));
- where a shipbuilder;
 - .. refuses or fails to furnish a return of costs in accordance with the appropriate approved form, the shipbuilder shall be liable to a penalty of \$1,000 (proposed Sub-Section 9C(6));
 - .. furnishes information or estimates which, to the knowledge of the shipbuilder, are false or misleading in a material particular, the shipbuilder shall be liable to a penalty of \$1,000, or six (6) months imprisonment, or both (proposed Sub-Section 9C(7)).

Adjustment of claims following returns

Proposed New Section 9D

- . This Section provides a procedure for the adjustment of claims for bounty resulting from any differences in costs which appear in a shipbuilder's claim for bounty (Section 9), and that shipbuilder's subsequent return of costs (Section 9C);
- in the event of such a difference, the shipbuilder is required to lodge with the Section 9C return costs a statement in respect of the difference. Failure to do so renders the shipbuilder liable to a penalty of \$1,000 (proposed Sub-Section 9D(1));

- the procedure for the lodgement of an adjustment statement is similar to that governing original claims (see Sub-Section 9(2));
- after examining the statement the Comptroller-General may either
 - .. approve the payment of any additional amount owing to the shipbuilder as a result of balancing the claim and return; or
 - .. serve on the shipbuilder a demand for the repayment of any overpayment in excess of \$100; or
 - .. decline to adjust the payments of bounty made in respect of claims lodged by the shipbuilder (proposed Sub-Section 9D(3));
 - .. the decision of the Comptroller-General for the above purposes is reviewable by the Administrative Appeals Tribunal (see clause 21);
- the Comptroller-General is required to give notice in writing to the shipbuilder setting out the decision under Sub-Section 9D(3) (proposed Sub-Section 9D(4)).

Other adjustments of claims

Proposed New Section 9E

- . This Section provides that the Comptroller-General shall serve a demand for repayment of an overpayment of a claim for bounty in excess of \$100, where the Comptroller-General discovers such an overpayment in a situation other than through an acknowledgement under Section 9B or a statement under Section 9D;
- the decision of the Comptroller-General is reviewable by the Administrative Appeals Tribunal (see clause 21).

Recovery of repayments

Proposed New Section 9F

- . This Section allows the Commonwealth to recover amounts owing to it (by action in court for a debt due) in situations where;
 - a person claims bounty which is not or does not become payable to that person (Section 8), a person has overclaimed for bounty (Section 9B), an overpayment is discovered following adjustment to claims made after returns have been lodged (Section 9D), or the Comptroller-General discovers an overpayment of bounty (Section 9E);
 - amounts owing to the Commonwealth by a person in any of the situations described in Sub-Section (1) may be deducted from any amount that is payable to that person under the Act, and where such a deduction is made the balance which is paid will be deemed to have been the full amount (proposed Sub-Section 9F(2)).

Clause 12 is a technical drafting clause, introducing a new part heading to the Principal Act.

Clause 13 repeals Section 10 of the Principal Act and introduces two new Sections to cater for new registration criteria resulting from the Government's decision on 11 October 1984.

Registration of premises

Proposed New Section 10

- . This Section, sets out the various requirements for the registration of premises under the Act. A pre-requisite for the payment of bounty under the Act is that the construction or modification of the vessel is carried out at premises registered in the name of the shipbuilder (see new Sub-Section 6(3A));
 - applications for the registration of premises are to be made to the Minister, on an approved form (proposed Sub-Section 10(2));
 - .. the Minister may require an applicant for registration to furnish such further information as the Minister considers necessary and may refuse registration until such further information is provided (proposed Sub-Section 10(10));
 - on receipt of an application for registration, the Minister shall either;

- .. register the premises in the name of the person and cause a notice to that effect to be served on the person; or
- .. refuse to register the premises and cause a notice to that effect to be served on the person (proposed Sub-Section 10(3));
 - a) where premises are registered, the registration shall date from the day the Notice of Registration is signed by the Minister or such earlier date not being a day earlier than 10 December 1984 (proposed Sub-Section 10(4));
 - b) the Notice of Registration shall specify whether registration is to be in respect of all bountiable vessels or a specified type or class of vessels and may specify the period during which the premises are to be registered (proposed Sub-Section 10(5));
- the regulations may prescribe conditions to be met by applicants for registration (proposed Sub-Section 6). This provision is proposed to give effect to the introduction of the proposed new registration criteria;
- the registration of premises which were not engaged in the construction or modification of bountiable vessels on 11 October 1984 will not be permitted unless the Minister forms the opinion that the new registration will permit the orderly development in Australia of the industry constructing or modifying bountiable vessels (proposed Sub-Section 10(11));
- registrations may be transferred on the submission of a joint application to the Minister (proposed Sub-Sections 10(12), (13), (14));
- the Minister may cancel the registration of premises where the Minister becomes satisfied that any one of the following applies;
 - .. bountiable vessels are not being constructed or modified at the premises;
 - .. where premises are registered in relation to a particular vessel or class of vessels, the specified vessel or class of vessels is not being constructed or modified;

- .. the construction or modification of bountiable vessels is being carried on by someone other than the person in whose name the premises are registered; or
- .. the construction or modification is not being carried out in accordance with prescribed conditions
- a decision of the Minister refusing the registration of premises (Sub-Section 10(3)), or cancelling the registration of premises (Sub-Section 10(15)) is reviewable by the Administrative Appeals Tribunal (see clause 21).

Registration of persons as prescribed shipbuilders

Proposed New Section 10A

- . This Section sets out the various requirements for the registration of persons as prescribed shipbuilders under the Act. A prescribed shipbuilder is to be the person who arranges, or proposes to arrange, for the whole of the construction or modification of bountiable vessels to be carried out on behalf of that person by other persons at premises in Australia (proposed Sub-Section 10A(2)). A pre-requisite for the payment of bounty to the prescribed shipbuilder is that the construction or modification of the vessel is carried out during the period in which the person is so registered (see Section 6);
- applications for registration as a prescribed shipbuilder are to be made to the Minister on an approved form (proposed Sub-Section 10A(2));
 - .. the Minister may require an applicant for registration to furnish such further information as the Minister considers necessary and may refuse registration until such further information is provided (proposed Sub-Section 10A(10));
- on receipt of an application for registration, the Minister shall either;
 - .. register the applicant as a prescribed shipbuilder and cause a notice to that effect to be served on the person; or
 - .. refuse to register the applicant as a prescribed shipbuilder and cause a notice to that effect to be served on the applicant (proposed Sub-Section 10A(3));
 - a) where persons are registered as prescribed shipbuilders, the registration shall date from the day the Notice of Registration is signed by the Minister

or such earlier date not earlier than 10 December 1984 (proposed Sub-Section 10A(4));

- b) the Notice of Registration shall specify whether registration is to be in respect of all bountiable vessels or in respect of a specified type or class of vessels and may specify the period during which the person is to be registered (proposed Sub-Section 10(5));
- the registration of persons who were not engaged in arranging for the whole of construction or modification of bountiable vessels on 11 October 1984 will not be permitted unless the Minister forms the opinion that the new registration will permit the orderly development in Australia of the industry constructing or modifying bountiable vessels (proposed Sub-Section 10A(11));
- the Minister may cancel the registration of premises where the Minister becomes satisfied that any one of the following applies;
 - .. the person no longer arranges for the whole of the construction or modification of bountiable vessels;
 - .. where the person is registered in relation to a particular vessel or class of vessels, the specified vessel or class of vessels is not being constructed or modified;
 - .. the construction or modification is not being carried out in accordance with prescribed conditions;
- a decision of the Minister refusing the registration of premises (Sub-Section 10A(3)), or cancelling the registration of premises (Sub-Section 10A(12)) is reviewable by the Administrative Appeals Tribunal (see clause 21).

Clause 14 repeals Sections 11 and 12 of the Principal Act and introduces three new Sections to introduce new administrative procedures along similar lines to other recent bounty legislation.

Accounts

Proposed New Section 11

- . This Section makes eligibility for bounty conditional upon the maintenance of appropriate commercial records;
- such records are required to be;

- .. kept in writing in the English language or be readily accessible and convertible into writing in the English language (proposed Sub-Section 11(2)); and
- .. retained for at least 3 years after the completion of the construction or modification of the vessel proposed Sub-Section 11(1)).

Securities

Proposed New Section 12

- . This Section confers upon the Minister the power to require a person to whom bounty could become payable to give security for compliance with the Act and Regulations. Payment of bounty may be withheld until the required security is given;
 - a decision of the Minister requiring a person to give a security is reviewable by the Administrative Appeals Tribunal (see clause 21).

Shipbuilders to furnish returns

Proposed New Section 12A

- . This Section imposes an obligation on shipbuilders to furnish a return, within 28 days after the month to which the return relates, setting out particulars of the bountiable vessels constructed or modified by the shipbuilder and those proposed to be constructed or modified by the shipbuilder (proposed Sub-Section 12A(1));
 - the procedure for lodgement of a return is similar to that governing claims for payment of bounty (see Sub-Section 9(2));
 - where a shipbuilder;
 - .. refuses or fails to furnish a return the shipbuilder shall be liable to a penalty of \$1,000 (proposed Sub-Section 12A(3));
 - .. lodges a return that, to the knowledge of the shipbuilder, is false or misleading in a material particular, the shipbuilder shall be liable to a penalty of \$1,000 or six(6) months imprisonment or both (proposed Sub-Section 12A(4));

Stock-taking and Inspection of production and accounts, etc

Clause 15 amends Section 14 of the Principal Act by omitting paragraph (1)(e) and substituting a new paragraph which;

- . will permit the inspection and the making and retaining of copies of accounts, books,

documents and any other records relating to the construction or modification of any bountiable vessel.

Power to require persons to answer questions and produce documents

Clause 16 amends Section 15 of the Principal Act to bring the provisions of that Section into line with similar provisions in more recent bounty legislation. Specifically paragraph (a) will require the Comptroller-General, a Collector or an authorized person to believe on reasonable grounds that a person is capable of giving information relevant to the operation of the Act before requiring the person to attend to answer questions and produce documents. Paragraphs (c) and (d) contain provisions now standard to bounty legislation relating to the operation of the powers to require persons to answer questions and produce documents.

Offences

Clause 17 amends Section 17 of the Principal Act by omitting Sub-Sections (2), (3) and (4) and substituting new Sub-Sections which;

- . create offences for;
 - obtaining or attempting to obtain bounty that is not payable, which is to be liable to a penalty of \$2,000 or imprisonment for 12 months or both (proposed Sub-Section 17(2));
 - the making of false or misleading statements, or the presentation of certain records, that are known to be false or misleading in a material particular. Both situations are to be liable to a penalty of \$1,000 or 6 months imprisonment, or both (proposed Sub-Section 17(3)).

Time for prosecutions and recovery of bounty on conviction

Clause 18 introduces two new Sections into the Principal Act, as follows;

Proposed New Section 17A

- . This Section provides that a prosecution for an offence against the Act may be commenced at any time within 3 years of the commission of the offence;

Proposed New Section 17B

- . This Section empowers a court to order a person convicted of an offence against Sub-Section 9B(1) (relating to a claim for bounty that is excessive or Sub-Sections 17(2) or (3) (relating to the submission of false or misleading information) to:
 - refund to the Commonwealth the amount of bounty wrongfully obtained, in addition to imposing the prescribed penalty.

Heading to Part V

Clause 19 is a technical drafting clause, introducing a new part heading into the Principal Act.

Return for Parliament

Clause 20 effects minor technical drafting changes to Section 1 of the Principal Act.

Application for Review

Clause 21 amends Section 20 of the Principal Act (relating to those situations under the Act which are reviewable by the Administrative Appeals Tribunal) by the addition of further areas for review. All of these relate to the new administrative provisions inserted into the Principal Act.

Statement to accompany notice of decisions

proposed Section 20A is a standard provision requiring notification of decisions or requirements of a kind referred to in Sub-Section 20(1) to include a statement that applications may be made to the Administrative Appeals Tribunal for review of the decision or requirement.

Appropriation

Clause 22 amends the appropriation provision in the Principal Act (Section 21) to make it clear that advances on account of bounty are likewise appropriated under that provision.

Regulations

Clause 23 remakes the regulation making power to bring it into line with the now standard legislative format.

Transitional provisions

Clause 24 contains a number of transitional provisions consequential upon the introduction of the export bounty on 10 December 1984.

