

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BOUNTY (CITRIC ACID) BILL 1991

EXPLANATORY MEMORANDUM

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



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OUTLINE

This Bill proposes new legislation to provide bounty assistance for the production of citric acid using a special high technology production process.

The Bill gives effect to the Government's decision announced on 12 March 1991 to introduce a production bounty for such citric acid for the 4 3/4 years period from 12 March 1991 to 31 December 1995.

The principal elements of the bounty scheme are as follows:

- . the bounty is to be payable on the production in Australia of citric acid by a special high technology production process involving the fermentation of carbohydrates in air lift fermenters (Clause 4, definition of "bountiable citric acid" and Clause 6);
- . bounty is payable at a specific rate per tonne of citric acid produced, with the rate phasing down every year over the life of the bounty (Clause 9);
- . bounty is payable to the producer of the bountiable citric acid, provided;
 - production is carried out in Australia during the bounty period, and
 - the producer is, at the time of production, a registered person

(Clauses 6 and 15 refer);

- .. Registration of persons under Clause 15 will make bounty assistance contingent on a number of conditions being met. The conditions, to be prescribed by regulations, (subclauses 15(5) and 15(7)), will include requirements that bounty recipients,
 - i) continue research, development and commercialisation of citric acid in Australia by the high technology production process being singled out for assistance;
 - ii) contribute to research in new product development arising from or associated with the fermentation technology the subject of this bounty, with a view to the commercialisation of those new products in Australia;

- iii) explore international market opportunities for the fermentation technology and the product (citric acid); and
- iv) take all reasonable steps to ensure maximum advantage is taken from the expertise and know-how associated with the development and production of citric acid and other new products in Australia by suitable licensing, franchising or other arrangements.

- . During any particular year the payment of bounty, or an advance on account of bounty, is subject to, and payable from, money appropriated by the Parliament for that purpose (subclause 11(2) and Clause 30).

Financial Impact Statement

The amount of money available for the payment of bounty, or advances on account of bounty, under this scheme is limited by that amount which is appropriated by the Parliament for that purpose (subclause 11(2) and Clause 30).

It is anticipated the total cost of this Bounty (at current prices) will be \$7.27 million, on a financial year breakdown as follows:

- \$1.05 million for 1991-92;
- \$1.65 million for 1992-93;
- \$2.17 million for 1993-94;
- \$1.85 million for 1994-95;
- \$0.55 million for 1995-96.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Short title

Clause 1 provides for the Act to be cited as the Bounty (Citric Acid) Act 1991.

Commencement

Clause 2 provides for the Act to commence on 12 March 1991, the date of the Government's announcement of this proposed new bounty scheme, as part of the Industry Statement.

General administration of Act

Clause 3 is a standard administrative provision of all bounties schemes, which provides for the Comptroller-General of Customs ("the Comptroller") to have the general administration of the Act. One result of this provision is that the Comptroller is thus conferred with a power to delegate his powers or functions under this Act pursuant to Section 14 of the Customs Administration Act 1985.

Interpretation

Clause 4 Subclause(1) defines a number of words and expressions for the purposes of the legislation.

In particular, the subclause defines:

"bountiable citric acid" as being citric acid produced by the fermentation of carbohydrates in air lift fermenters.

• this new high technology production process is a more energy efficient production method than the conventional method of fermenting citric acid. It is production by this process which is eligible for bounty (subclause 6(1) refers).

"period to which this Act applies" as the period from 12 March 1991 (the date of the Government's announcement of the proposed new bounty scheme (Clause 2 refers)) to 31 December 1995.

Subclause (2) is a standard administrative provision which sets out the circumstances under which two persons are to be deemed to be associates of each other for the purposes of the Act.

Uniformity

Clause 5 is a standard provision in bounty legislation to expressly prohibit the exercise of any power under the Act in a manner which would result in bounty not being uniform throughout the Commonwealth, in accordance with the Constitutional requirement to that effect.

PART 2 - BOUNTY

Specification of Bounty

Clause 6 prescribes the eligibility conditions that govern whether bounty may be paid under this bounty scheme.

Subclause (1) provides that bounty is payable on the production, in Australia, of bountiable citric acid. Bountiable citric acid is defined in Clause 4 as citric acid which is produced by a certain high technology production process.

Subclause (2) provides that bounty is payable to the producer of the bountiable citric acid;

Subclause (3) provides that a producer of bountiable citric acid will not be eligible to claim bounty unless:

- . the producer of the citric acid, at the time the acid is produced, is a person registered under Clause 15; and
- . the production of the citric acid is carried out in Australia before the end of the bounty period ie., before 31 December 1995.
 - a claim for bountiable citric acid which is produced according to the above may be made at any time during the bounty period, and a further 3 months after the end of the bounty, ie until 31 March 1996 (subclause 8(2) refers).

Certain Circumstances in which bounty is not payable

Clause 7 prescribes certain circumstances where bounty is not payable, ie. it prohibits the payment of bounty for bountiable citric acid that is to be

directly or indirectly exported to New Zealand.

- The ANZCERTA trade agreement with the Government of New Zealand prohibits bounty assistance on goods produced in either country and exported to the other country, as from 1 July 1990. This provision gives effect to that treaty commitment, insofar as this bounty scheme is concerned.

PART 3 - PAYMENT OF BOUNTY

Claims for payment of bounty

Clause 8 sets out the procedures to be followed in claiming bounty:

- . a claimant is required to (subclause (2)):
 - lodge a claim on an approved form (defined in subclause 4(1) as a form approved by the Comptroller in writing) providing such information as is required by the form;
 - sign and witness the form as required, by Clause 14, and
 - lodge the form with a Collector for a State, or with the Comptroller, at any time after the production of the acid and before 31 March 1996;
- . the Comptroller is then obliged to examine the claim and either (subclause (3)):
 - approve, in writing, the payment of the amount including where the amount is different from the amount for which the claim was made, with the difference being less than \$200, and the Comptroller is satisfied the difference is not attributable to the person deliberately overclaiming or underclaiming the amount of bounty; or
 - refuse, in writing, to approve such payment;
 - the decisions of the Comptroller to approve or refuse the payment of bounty are reviewable by the Administrative Appeals Tribunal (paragraphs 28(1)(a) and (b)).

- . the Comptroller is obliged to provide to the claimant a notice setting out the Comptroller's decision where the claim is unsuccessful, or where there is a delay of more than 30 days in the processing of a successful claim (subclause (4)).

Rate of bounty

Clause 9 specifies the rate of bounty payable in respect of the production of bountiable citric acid as being;

- . \$700 per tonne after commencement of the bounty period and before 1 July 1992 (paragraph 9(2)(a));
- . \$550 per tonne between 1 July 1992 and 1 July 1993 (paragraph 9(2)(b));
- . \$350 per tonne between 1 July 1993 and 1 July 1994 (paragraph 9(2)(c));
- . \$250 per tonne between 1 July 1994 and 1 July 1995 (paragraph 9(2)(d));
- . \$150 per tonne between 1 July 1995 and 1 January 1996 (paragraph 9(2)(e)).
- In calculating the rate of bounty payable, the weight of bountiable citric acid is calculated as if it were in its crystallised state.
- .. if the citric acid is in liquid form, then the rate of bounty is applied to the weight of the liquid acid translated to its crystallised state (paragraph 9(3)(a)).

Advances on account of bounty

Clause 10 permits a registered producer of bountiable citric acid to receive an advance on account of bounty that person would receive for the production of bountiable citric acid. The advance may be made on such terms and conditions as the Comptroller approves in writing (subclause (1)).

- . The facility to receive advances on account of bounty is common in modern bounty legislation. A common feature of the advance facility is the provision that, if the bounty does not ultimately become payable to the producer (if, for example, the producer fails to comply with a condition as set out by the Comptroller under subclause (1) or, if the producer fails to produce the prescribed quantity of bountiable product) that money must be

repaid to the Commonwealth (subclause (3)). Similarly, if the advance exceeds actual bounty payable (subclause (2)), then the person must repay to the Commonwealth the amount of the excess.

Availability of money for payment of bounty or advances

Clause 11 confers a discretion on the Comptroller to defer bounty payments or advances on account of bounty, or make payments in such order as he or she considers appropriate, where he or she is of the opinion that the amount claimed for the payment of bounty or advances on account of bounty in a financial year will exceed the amount appropriated for that financial year (subclause (1));

- . Subclause (2) provides that if money is not appropriated by the Parliament in a financial year for the purposes of making payments of bounty or advances on account of bounty, then a person is not entitled to be paid bounty or advances on account of the bounty in that year;

Variation of excessive claim

Clause 12 imposes an obligation on a recipient of bounty to lodge an acknowledgment of error, within 28 days, where the recipient becomes aware that the original claim for bounty exceeds by more than \$200 the claimant's entitlement (subclause (1)):

- . the penalty for contravening sub-clause (1) is \$3,000;
 - it should be noted that pursuant to amendments to the Crimes Act 1914 effected by the Crimes Legislation Amendment Act 1987 (Act 120, 1987), penalties prescribed in legislation may be increased by up to five times where the offender is a body corporate rather than a natural person. This applies to all penalties in this Act.
- . the procedure in subclause (2) for the lodgement of an acknowledgment form is similar to that governing original claims (see subclause 8(2));
- . upon examination of the acknowledgment, where the Comptroller is satisfied there has been an overpayment by more than \$200, he or she shall cause to be served on the claimant a demand for the repayment of the amount of the overpayment (subclause (4));

- the decision of the Comptroller for the above purposes is reviewable by the Administrative Appeals Tribunal (paragraph 28(1)(c)).

Other adjustments of claims

- Clause 13 provides that the Comptroller shall serve a demand for the repayment of an overpayment of a claim for bounty in excess of \$200, where the Comptroller discovers such an overpayment in a situation other than through an acknowledgment under Clause 12 (subclause (1));
- . the above decision of the Comptroller is reviewable by the Administrative Appeals Tribunal (paragraph 28(1)(d));
 - . where the amount of an overpayment referred to in sub-clause (1) is less than \$25,000 and the Comptroller is satisfied that:
 - the overpayment was due to an error that did not involve any failure on the part of the person who lodged the claim to comply with the Act or the regulations, and repayment of the overpayment would be unreasonable, or cause that person undue hardship; or,
 - the cost of endeavouring to recover the overpayment is so high and the amount likely to be recovered as a result of endeavouring to recover the overpayment is so low that taking action to recover the overpayment would not be justified;
- the Comptroller may refrain from causing a demand to be served (subclause (2));
- . where the Comptroller elects not to proceed for repayment, particulars of the relevant amount shall be included in the annual report of the Australian Customs Service tabled in Parliament for the year in which the Comptroller so acted (subclause(3)).

Forms

- Clause 14 prescribes the conditions for the signing and demand for the repayment of an overpayment of a required to be lodged pursuant to the Act, which is common to all bounty Acts. Authorised person are permitted to submit claims or lodge returns on behalf of the legal claimant (be that claimant a natural person or a body corporate), which is intended to assist claimants and expedite the processing of claims by the Australian Customs Service.

PART 4 - ADMINISTRATION

Registration of Persons

- Clause 15 prescribes the manner of applying for registration under the Scheme, as well as specifying the conditions that must be met by a person who wishes to be registered for the purposes of this Act.
- . A precondition of bounty eligibility under this scheme is that the producer of the bountiable citric acid is a registered person at the time of production of the acid (subclause 6(3) refers).
- A producer of bountiable citric acid in Australia who wishes to apply for registration must apply on the appropriate approved form (subclause (2) requires that a person who wishes to apply for registration must be a producer at the time of application). Should the person satisfy these requirements, and any registration criteria which might be prescribed by regulation under subclauses (5) and (7), the Comptroller shall either sign a notice of registration, and serve the same on the applicant, or, if the person fails to meet the requirements, decline to register the person (subclause (3));
- . where registration is approved, registration takes effect from and including the day on which the application was received by the Comptroller, unless an application is received within the first month after this Act receives the Royal Assent, in which case registration is deemed to have occurred from the 12 March 1991 date of commencement of this Act (subclause (4));
 - . this decision is reviewable on its merits by the Administrative Appeals Tribunal: paragraph 281)(e);
 - . it is proposed that the regulations will prescribe registration criteria to give effect to the following policy conditions:
 - that a registered person continue research, development and commercialisation of citric acid by the high technology production process the subject of the present bounty;
 - that a registered person contribute to research in new product development arising from or associated with the fermentation process the subject of

this bounty;

- that a registered person explore international market opportunities for the fermentation technology and the product (ie. citric acid); and
- that a registered person take all reasonable steps to ensure maximum advantage is taken from the expertise and know-how associated with the development and production of citric acid and other new products in Australia by suitable licensing, franchising or other arrangements.

subclause (11) provides that a registration may be cancelled by the Comptroller where the Comptroller becomes satisfied that the person no longer carries out the production in Australia of bountiable citric acid, or where the person fails to meet any of the registration criteria specified in sub-clauses (5) or (7);

- . the decision to cancel a registration is reviewable on its merits by the Administrative Appeals Tribunal (paragraph 28(1)(f)).

Accounts

Clause 16 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 (subclause (2)); and
- . retained for at least 3 years after the date of lodgement of a claim for bounty pursuant to Clause 8, or at the end of the period to which the Act applies, whichever is the later (subclause (1)).

Securities

Clause 17 confers upon the Comptroller the power to require a person to whom bounty could become payable to give security for compliance with the Act, and any regulations made under it. Payment of bounty may be withheld until the required security is given:

- . a decision of the Comptroller requiring a person to give a security is reviewable by the Administrative Appeals Tribunal (paragraph 28(1)(g)).

Appointment of authorised officers

Clause 18 empowers the Comptroller to appoint officers of the Australian Customs Service as authorised officers upon whom administrative functions may be conferred for the purposes of the Act.

Entry on premises occupied by registered person

Clause 19 empowers an authorised officer to enter premises occupied by a registered person (other than residential premises), at any reasonable time to inspect any bountiable citric acid, any activity in relation to the production of bountiable citric acid, or the accounts, books, documents or other records relating to the production process of bountiable citric acid, and take copies and retain extracts of any such records (subclause (1));

- . if the occupier of such premises fails to provide the authorised officer with all reasonable facilities and assistance for the effective exercise of the above powers, he or she is liable to a penalty of \$3,000 (subclause (2)).
- it should be noted that pursuant to amendments to the Crimes Act 1914 effected by the Crimes Legislation Amendment Act 1987 (Act 120, 1987), penalties prescribed in legislation may be increased by up to five times where the offender is a body corporate rather than a natural person. This applies to all penalties in this Act.

Entry on other premises

Clause 20 lists the circumstances which permit authorised officers to enter other types of premises (ie. not the business premises referred to in Clause 19).

- . Where an authorised officer has reasonable grounds for believing that premises are premises where there is bountiable citric acid, or where an activity in relation to the production of bountiable citric acid is being carried out, or are premises in which there are kept any accounts, books, documents or other records relating to the production of bountiable citric acid, the authorised officer may make an application to a Magistrate for a warrant authorising the authorised officer to enter the premises and exercise the powers of an authorised officer (described below)(subclause (2));

- the powers of an authorised officer are:
 - . to inspect any bountiable citric acid;
 - . to inspect an activity in relation to the production of bountiable citric acid; and
 - . to inspect accounts, books, documents and other records relating to the relevant activity in respect of bountiable citric acid, including the making of copies of, or taking and retaining extracts from such records, (subclause (4));
- . If the Magistrate is satisfied there are reasonable grounds for believing the premises to be premises referred to above, and the occupiers of the premises have not given consent for the authorised officer to enter the premises to exercise the powers of an authorised officer, he or she may grant a warrant authorising the authorised officer to enter the premises during such hours as the warrant specifies, or at any time, and if necessary by force, and to exercise the powers of an authorised officer (subclause (3)).

Power to require persons to answer questions and produce documents

Clause 21 empowers an authorised officer to require certain persons to attend before him or her to answer questions and produce documents in relation to the production of bountiable citric acid, and provides for the withholding of bounty payments until the requirements of this Clause are met. The authorised officer must believe on reasonable grounds that the particular person is capable of giving information relevant to activities in respect of bountiable citric acid (subclause (1));

- . subclause (3) creates an offence for not disclosing that records prepared by one person and produced by another person in pursuance of a notice under subclause (1) are false or misleading, where the latter person knows them to be false or misleading;
- .. penalty for breach - 6 months imprisonment;

- . subclause (5) prevents the use in criminal proceedings against a person, except under subclause (3) or paragraph 23(3)(a) of the Act, of self-incriminating information given and documents produced by that person.

Power to examine on oath, etc.

Clause 22 provides for an authorised officer to examine on oath or affirmation persons attending before him or her.

Offences

Clause 23 creates offences for:

- . refusing or failing to attend before a Collector or an authorised officer, or to take an oath or make an affirmation, or to answer questions or produce documents when so required pursuant to this Act (subclause (1));
 - .. penalty - 6 months imprisonment;
- . obtaining or attempting to obtain bounty that is not payable (subclause (2));
 - .. penalty - imprisonment for five years;
- . knowingly making statements, orally or in writing, that are false or misleading in a material particular, or presenting an account, book or document that is to the knowledge of the person false or misleading in a material particular (subclause (3));
 - .. penalty - imprisonment for 6 months;
- . where, in proceedings for an offence against subclauses (2) or (3),
 - it is necessary to establish a state of mind on the part of a corporation, it is sufficient to show that a director, servant or agent acting within the scope of his or her actual or apparent authority had that state of mind (subclause (4));
 - any conduct so engaged in by the director, servant or agent (or any other person at the direction of a director, servant or agent) is deemed to have also been engaged in by the corporation (subclause (5));
 - Subclauses (7) and (8) operate so as to prevent a person being convicted of

similar offences committed in respect of the same claim for bounty; viz, offences under subclause 23(2) and subclause 12(1)(paragraph 23(7)(a)); or offences under subclauses 23(2) and 23(3) (paragraph 23(7)(b)).

Time for prosecutions

Clause 24 provides that proceedings for offences against this Act may commence within 3 years of the alleged commission of the offence.

Recovery of bounty on conviction

Clause 25 empowers a court to order a person convicted of an offence under subclauses 12(1) or 23(2) or (3) to refund to the Commonwealth the amount of bounty wrongfully obtained, in addition to imposing the penalty prescribed in those sub-sections against that person (subclause (1));

Subclauses (2) to (6) provide a procedure to ensure that amounts of bounty to be refunded under subclause (1) do not fail to be recovered due to jurisdiction difficulties.

Recovery of repayments

Clause 26 allows the Commonwealth to recover amounts owing to it (by an action in a court for a debt due) particularly in situations where:

- . a person has overclaimed for bounty (clause 12), or the Comptroller-General discovers an overpayment of bounty (clause 13) (subclause (1));
- . amounts owing to the Commonwealth by a person in the situations described in subclause (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 (subclause (2)).

PART 5 - MISCELLANEOUS

Return for Parliament

Clause 27 provides for the furnishing by the Comptroller to the Minister (subclause (1)) and the tabling in Parliament by the Minister (subclause (2)) of annual returns in relation to the payment of bounty under this Act during that particular year.

Application for review

Clause 28 provides a right to apply to the Administrative Appeals Tribunal for review of specified administrative decisions affecting the rights or entitlements of persons under the Act.

Statement to accompany notice of decisions

Clause 29 obliges the Comptroller-General to advise persons whose rights are affected as a result of a decision or requirement by the Comptroller pursuant to one of the provisions listed in Clause 28 that there is a right of review to the Administrative Appeals Tribunal, although subclause (2) provides that failure to issue this notice does not effect the validity of the Comptroller's decision.

Appropriation

Clause 30 provides for payments of bounty (including advances on account of bounty) to be paid out of money appropriated by Parliament for the purpose.

Regulations

Clause 31 permits the making of regulations where required by the Act, or where it is necessary or convenient to do so to give effect to the Act.

