

1987

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BOUNTY AND SUBSIDY LEGISLATION AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

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

Bounty and Subsidy Legislation Amendment  
Bill 1987

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Outline

This Bill is an omnibus measure, which proposes to amend a series of Bounty and Subsidy Acts to give effect to various Government decisions, correct some drafting anomalies and clarify some eligibility criteria in several schemes, and complete the modernisation of the administrative provisions in several other schemes commenced in the previous two Bounty and Subsidy Legislation Acts of 1986.

The major changes contained in the Bill are the -

- (i) amendments to the Bounty (Textiles Yarns) Act 1981 -
  - . to give effect to a recommendation arising from the Government's Textile, Clothing and Footwear Decision of 27 November 1986, to remove the present disincentive on local yarn producers who wish to engage in export production by extending the eligible production costs upon which bounty is paid to include a producer's overheads associated with export production (Clauses 14 and 15), and
  - . to complete the modernisation of the administrative provisions of the Act commenced by the Bounty and Subsidy Legislation Amendment Act (No. 2) 1986 (Schedule 1),
- (ii) amendments to the Fertilisers Subsidy Act 1986 -
  - . to clarify the transitional provisions of the Act to put beyond doubt the Government's intention that locally produced fertiliser be subject to the new assistance regime set out in the Act (i.e. increased rates of subsidy on locally produced phosphatic fertilisers) from 20 August 1986 (the date of commencement of the Act) (Clauses 18 and 19),
- (iii) amendments to the Subsidy (Cultivation Machines and Equipment) Act 1986 -
  - . to correct eligibility for subsidy provisions in the Act, as a result of legal advice from the Attorney General's Department, to give effect to the Government's stated intention of making all classes of bountiable equipment held in stock on 15 April 1986 (the date of commencement of the Act) eligible for subsidy (Clause 21),

(iv) amendments to the Bounty (Books) Act 1986 -

- . to re-order the deductions made in the calculation of "price-paid" for the purposes of the Act, and to acquit two undertakings to the Senate Standing Committee for the Scrutiny of Bills, making two determinations by the Comptroller-General of the Australian Customs Service subject to parliamentary scrutiny (Clause 10),
- . to add a further item to the list of ineligible books, as per the previous (1969) Bounty Books Act, (Clause 11), and
- . to add a further exception to the requirement that production occur in Australia, to cater for the pre-press production service of film preparation (Clause 12),

## (v) amendments to the

- Bounty (Bed Sheeting) Act 1977,
- Bounty (Commercial Motor Vehicles) Act 1978, and
- Bounty (Injection-moulding Equipment) Act 1979

. to remove the standing appropriation provision in each of those Acts and replace it with the standard Parliamentary appropriation provision, to give effect to the Government's broad policy of replacing standing appropriations in Commonwealth Acts with "annual" appropriation provisions, as a means of controlling Government expenditure by tying down appropriations to those monies appropriated expressly by the Parliament for the purpose (Clause 22 and Schedule).

In addition to the above, the Bill contains a series of minor technical amendments, the principal ones of which are,

- . to the Bounty (Computers) Act 1984, to effect a slight re-wording to the definitions of "bountiable modem" and "bountiable multiplexer" and to update the various provisions of the Act relating to the payment of bounty, similar to the updating exercise in the last Bounty and Subsidy Legislation Amendment Act, (see the Schedule ),
- . to the Bounty (Ship Repair) Act 1986, to remove the reservation of bounty pre-condition currently applying to repair contracts, and to clarify that the basis for determining the cost of an eligible repair is to be the "gross" price payable under the contract pursuant to which the repair was carried out (see the Schedule), and

to the Bounty (Bed Sheeting) Act 1977, to amend the eligibility criteria for payment of bounty under the Act to cater for related bodies corporate which together carry out all the processes in the manufacture of bed sheeting, but which do not individually carry out the whole process of manufacture, as is presently required (Clauses 7 and 8).

#### Financial Impact Statement

The proposed amendments in this Bill have no direct financial implications, with the exception of the amendments to the Bounty (Textile Yarns) Act 1981 relating to the extension of eligibility for bounty to a proportion of a producer's overheads associated with production for export. Given the current low level of yarn exports, it is expected an additional \$300,000 in bounty payments under the Act will be made in 1987/1988, the financial year when the extension commences.

## NOTES ON CLAUSES

### PART I - PRELIMINARY

#### Short title

Clause 1 is a formal machinery clause.

#### Commencement

Clause 2 provides for the Act to come into operation on the day on which it receives the Royal Assent (subclause (1)), with the exception of:

Part II (the amendments of the Bounty (Bed Sheeting) Act 1977 to facilitate the registration of and payment of bounty to related bodies corporate which together carry out all the processes in the manufacture of bed sheeting), which shall be deemed to have come into operation on 5 September 1986, the date on which industry restructuring resulted in the splitting of the production processes in the manufacture of bed sheeting amongst several related bodies corporate (subclause (2));

paragraph 10(a) and Section 12 (re Bounty (Books) Act 1986), relating to the calculation of "price-paid" for the purposes of subsection 4(5) of that Act, and the addition of a further exception to the eligibility for bounty requirement that production occur in Australia), which shall be deemed to have come into operation on 1 January 1987, the date of commencement of the Bounty (Books) Act 1986, (subclause (3));

Part V (the amendments of the Fertilisers Subsidy Act 1986 to provide that fertilisers produced in Australia prior to 20 August 1986 shall be subject to the new rates of assistance in the Act), which shall be deemed to have come into operation on 20 August 1986, the date of commencement of the Fertilisers Subsidy Act 1986, (subclause (4));

Part VI (the amendments of the Subsidy (Cultivation Machines and Equipment) Act 1986 to give effect to the policy that bountiable equipment held in stock on 15 April 1986 be eligible for subsidy), which shall be deemed to have come into operation on 15 April 1986, the date of commencement of the Subsidy (Cultivation Machines and Equipment) Act 1986, (subclause (5));

the amendments in Section 22 of the Bounty (Bed Sheeting) Act 1977, the Bounty (Commercial Motor Vehicles) Act 1978 and the Bounty (Injection-moulding Equipment) Act 1979 (relating to the removal of the standing appropriation provision in each of those Acts and their replacement by an annual appropriation provision), which shall come into operation on 1 July 1987, the next available financial year (subclause (6));

the amendments in Section 22 of the Bounty (Computers) Act 1984 (other than the amendments of subsection 3(1), and the amendments of the Bounty (Textile Yarns) Act 1981 (relating to the updating of various administrative and penalty provisions in those Acts), which shall come into operation 30 days after the day on which this Act receives the Royal Assent (which is the normal lead time for the commencement of provisions which impose new penalties or obligations on persons) (subclause (7)); and

the amendments in Section 22 of the Bounty (Ship Repair) Act 1986 (relating to the removal of the reservation pre-condition for repair contracts, and the "definition" of price for the purposes of ascertaining the cost of repair to be the "gross" price payable under the contract pursuant to which the repair was carried out) which shall be deemed to have come into operation on 10 October 1986 (the date of commencement of the Bounty (Ships Repair) Act 1986) (subclause (8)).

### Application

Clause 3 is a standard savings provision, which has the effect of preserving

the administrative provisions applicable to claims for bounty made before the commencement of the amendments proposed to the Bounty (Textile Yarns) Act 1981 in Clause 22 as if those amendments had not been made (subclause (1)), and

the pecuniary penalties relating to the offences committed before the commencement of the amendments proposed to the Bounty (Textile Yarns) Act 1981 and the Bounty (Computers) Act 1984, as if those amendments had not been made.

PART II - AMENDMENTS OF THE BOUNTY (BED SHEETING)  
ACT 1977

Principal Act

Clause 4 is a formal machinery clause which identifies the Bounty (Bed Sheeting) Act 1977 as the Principal Act for the purposes of this Part of the Bill.

Interpretation

Clause 5 amends Section 3 of the Principal Act by inserting a new definition of "manufacturer", to expressly provide that a person who carries out part only of the manufacturing processes in relation to bed sheeting is to be regarded as a manufacturer for the purposes of the Act, and thus potentially eligible to be paid bounty under the proposed amendments to section 5 (see clause (7)).

Related bodies corporate

Clause 6 inserts a new section 3A into the Principal Act which describes when particular bodies corporate will be deemed to be related to each other, for the purpose of satisfying the amended eligibility criteria for payment of bounty proposed under clause 7 (which will grant entitlement to receive a payment of bounty where the manufacture of bed sheeting is carried out wholly by related bodies corporate, even though no one particular body corporate carries out all the processes in the manufacture).

Specification of Bounty

Clause 7 amends Section 5 of the Principal Act to accommodate the fact situation in the manufacture of bed sheeting where single companies are no longer involved in carrying out all the processes in the manufacture. The principal amendment is to paragraph 5(3)(a)

to remove the absolute requirement that the manufacture be wholly carried out by a single person or company and allow instead manufacture by related bodies corporate, so long as the whole manufacture is undertaken by those related bodies corporate (paragraph 7(b));

a consequential amendment is made to subsection 5(2), to determine the person to whom bounty is payable where related bodies corporate are involved in the whole process of manufacture, but no one company carries out the entire process. The new amendment makes bounty payable to the manufacturer who carried out the last process in the manufacture of the bed sheeting (paragraph 7(a));

- the last process in the manufacture of bed sheeting is defined in subsection 3(2) of the Act.

### Registration of premises

#### Clause 8

amends Section 11 of the Principal Act (the registration of premises provision) as a consequence of the amendments for eligibility of bounty in Clause 7, which expands the class of potential eligible manufacturers by allowing companies or persons which carry on part only of the manufacturing processes to still be eligible for payments of bounty. (Payment of bounty is still conditional on manufacture being carried out at registered premises);

subsection (2) is recast to provide that in addition to permitting an application for registration by a person who carries on or proposes to carry on all the processes in the manufacture of bed sheeting, a body corporate will now be permitted to apply for registration where the body corporate carries on part only of the manufacturing processes, so long as all the remaining processes are carried on, or are proposed to be carried on, by related bodies incorporated (paragraph (a));

subsections (6), relating to registration, and (8), relating to cancellation of registration, are recast along similar lines to subsection (2) above (paragraphs (b) and (c)).



PART III - AMENDMENTS OF THE  
BOUNTY (BOOKS) ACT 1986

Principal Act

Clause 9 is a formal machinery clause which identifies the Bounty (Books) Act 1986 as the Principal Act for the purposes of this Part of the Bill.

Interpretation

Clause 10 this clause amends Section 4 of the Principal Act by;

amending paragraphs 4(5)(a) and (b) of the Principal Act. This amendment alters the manner by which the price paid or payable by a person for the production of a book, or any production process in relation to a book, or for paper or binding materials, is ascertained. The price shall be taken to be the gross price charged less the amount of any rebate in respect of the price, and then an amount equal to 16.7% of that price (which is the percentage of bounty, to ensure that bounty is not paid on any profit element in the price paid or payable by the book); and

adding new subsections 4(9) and (10) to the Principal Act to provide that the Comptroller-General's declarations for the purposes of subsection 4 (1) of the Principal Act (that a body is to be considered a "recognised educational institution" for the purposes of the Act (new subsection 4(9)), and the approval of means of fastening a publication for the purposes of receiving bounty other than those listed in the Principal Act (new subsection 4(10)) are to be treated as if they were Regulations, so that the tabling and disallowance provisions of the Acts Interpretation Act 1901 may apply

- this measure acquits an undertaking made by the Minister for Industry, Technology and Commerce to the Senate Standing Committee for the Scrutiny of Bills in 1986 that these discretions of the Comptroller-General would be amended to subject them to review, at the next available opportunity.

Ineligible Books

Clause 11 adds a new paragraph 11(1)(sa) to the Act, which extends the classes of books that are ineligible to receive bounty to include books that if sent through the post would lead to a person being charged with an offence against the law of the Commonwealth or of a Territory.

Specification of Bounty

Clause 12 amends the existing subsection 10(5) of the Principal Act to provide that a printer or publisher may have the book's film preparation performed outside Australia, as well as its typesetting and/or colour separations, without losing its eligibility to receive bounty.

PART IV - AMENDMENTS OF THE  
BOUNTY (TEXTILE YARNS) ACT 1981

Principal Act

Clause 13 is a formal machinery clause which identifies the Bounty (Textile Yarns) Act 1981 as the Principal Act for the purposes of this Part of the Bill.

Interpretation

Clause 14 amends Section 2 of the Principal Act by inserting two new definitions into subsection (1). The definitions are consequential on the extension of the eligible value added base, upon which bounty is paid, to a proportion of a producer's overheads associated with export production. An essential pre-condition to eligibility for the increased value-added base is that more of the producer's bountiable yarn was sold or used domestically than was sold or otherwise disposed of for export. The effect of the amendment is to remove a disincentive on local producers to export. The two proposed definitions provide as follows;

"disqualifying accounting period", which is an accounting period where more of a producer's production of bountiable yarn is sold for export than is sold or used domestically, and as such, that producer would not be eligible to the increased factory cost base (and thus an increased payment of bounty) on the

producer's domestic production of bountiable yarn,

"qualifying accounting period" is one in which a producer is eligible for the extended bounty payments on the producer's local bountiable yarn production.

### Increased factory cost

Clause 15 inserts a new Section 3AA into the Principal Act, to give effect to the Government's policy to remove the present disincentive in the Act on local yarn producers engaging in some export production. The new section does not alter the current eligibility for payment of bounty (ie, only bountiable yarn which is sold or used domestically is eligible - see subsection 5 (5)), but it allows for a greater amount of bounty to be paid on that "domestic" bountiable yarn, commencing on or after 1 July 1987, by adding to the factory costs incurred in the production of that yarn a proportion (30%) of the factory costs incurred by that producer in producing that same type of bountiable yarn for export;

a yarn producer is eligible for this increased factory cost component where the end use sale or use conditions for the payment of bounty (subsection 5(5)) are satisfied on or after 1 July 1987, and in a "qualifying accounting period", (ie one which does not immediately follow an accounting period in which export production exceeds domestic production,

the additional factory cost component is 30% of the factory cost incurred by the producer in the production of the same kind of bountiable yarn the subject of the bounty claim, produced in the same period as the yarn the subject of the claim.

## PART V - AMENDMENTS OF THE FERTILISERS SUBSIDY ACT 1986

### Principal Act

Clause 16 is a formal machinery clause which identifies the Fertilisers Subsidy Act 1986 as the Principal Act for the purposes of this Part of the Bill.

Specification of Subsidy

Clause 17 amends Section 9 of the Principal Act by providing that subsidised nitrogenous and phosphatic fertilisers produced before 20 August 1986 at premises registered under the Nitrogenous Fertilizers Subsidy Act 1966 and the Phosphate Fertilizers Subsidy Act 1963 respectively, are deemed to have been produced at premises registered for the purposes of the Principal Act. This measure is designed to satisfy the eligibility for subsidy pre-condition that fertilisers be produced at registered premises (see paragraph 9 (3)(a)).

Application

Clause 18 amends Section 43 of the Principal Act by providing that the provisions of the Nitrogenous Fertilizers Act 1966 no longer apply to Australian fertiliser produced prior to August 20 1986 (see comment in clause 19).

Application

Clause 19 amends section 47 of the Principal Act by providing that the provisions of the Phosphate Fertilizers Subsidy Act 1963 no longer apply to Australian fertiliser produced prior to August 20 1986.

The Principal Act introduced new assistance arrangements for fertilisers, by giving effect to the Government's decision to remove the subsidies payable on imported fertilisers and reallocate those savings by increased subsidy payments (via increased rates of subsidy) on locally produced phosphatic fertilisers. (The rates of subsidy on locally produced nitrogenous fertilisers remained the same).

It was the Government's intention that the new higher rates for locally produced phosphatic fertilisers apply immediately (ie from 20 August 1986). In fairness however to those already committed to consignments of imported fertilisers, the standard transitional savings provision was to apply to continue the payment of subsidy on such fertilisers exported to Australia before 20 August 1986.

- the provisions of Sections 43 and 47 of the Act give effect to the Government's intention relating to imported fertilisers, but not to locally produced fertilisers. The three amendments to the Principal Act in Clauses 17-19 correct this situation.

PART VI-AMENDMENTS OF THE SUBSIDY  
(CULTIVATION MACHINES AND EQUIPMENT) ACT 1986

Principal Act

Clause 20 is a formal machinery clause which identifies the Subsidy (Cultivation Machines and Equipment) Act 1986 as the Principal Act for the purposes of this Part of the Bill.

Specification of subsidy - manufactured subsidised equipment

Clause 21 amends subsection 9(8) of the Principal Act to remove the present technical impediment on manufacturers of equipment prior to the commencement of the Act (15 April 1986) from receiving subsidy on that equipment, where the equipment was held in stock at the commencement of the Act. This will give effect to the Government's stated intention of making all classes of bountiable equipment held in stock on 15 April 1986 eligible for subsidy.

PART VII - OTHER AMENDMENTS OF ACTS

Other amendments of Acts

Clause 22 effects a series of minor technical and administrative amendments to the Bounty and Subsidy Acts listed in the Schedule.

SCHEDULEOTHER AMENDMENTS OF ACTS

The amendments in this Schedule effect a series of changes to various Bounty and Subsidy Acts, and in particular,

- . introduce a number of updated administrative provisions to the Bounty (Computers) Act 1984 and the Bounty (Textile Yarns) Act 1981, to streamline the administration of these Acts and to make them consistent with similar provisions applied to Bounty Acts recently,
- . remove the standing appropriation provision from the Bounty (Bed sheeting) Act 1977, Bounty (Commercial Motor Vehicles) Act 1978, and the Bounty (Injection-moulding Equipment) Act 1979, and replace it with an "annual" parliamentary appropriation provision,
- . add an additional exclusion from the permissible factory costs for the purposes of ascertaining the additional value added to bountiable printed fabric by a producer of the fabric in the Bounty (Printed Fabrics) Act 1981, and
- . remove the reservation of bounty pre-condition currently applying to repair contracts, and clarify the basis for determining the cost of an eligible repair in the Bounty (Ship-Repair) Act 1986;

as follows:

Bounty (Bed Sheeting) Act 1977

- . Subsections 8(2) and 8(3), which determined the order in which applicants were paid and the amount they were to be paid when claims for a particular year exceeded the bounty for the year, are repealed. Instead, a new section 10AA is added, as follows:

Availability of bounty

New Section 10AA provides the mechanism for making payments of bounty when claims in a particular year exceed the amount appropriated for that year:

- subsection (1) confers on the Comptroller-General a discretion subject to the regulations to defer bounty payments, 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 bounty in a financial year will exceed the amount appropriated in that financial year;

- sub-section (2) provides that, if money is not appropriated by the Parliament in a financial year for the purpose of the payment of bounty, then a person is not entitled to be paid bounty in that year;

. Section 22, which provided for a standing appropriation of money for the purposes of paying bounty, is repealed, and a new section 22 is substituted. The section will now provide that bounty is payable out of money appropriated by Parliament for the purpose.

#### Bounty (Books) Act 1986

- . Paragraph 4(2)(f), relating to the power of the Comptroller-General to approve new means of fastening together pages of a publication in "book form", is amended to require the approval of the Comptroller to be "in writing".
- . Paragraph 14(4)(d), relating to the time limit within which claims for bounty are to be lodged, is reworded slightly to ensure that claims are lodged within 12 months of the completion of production of the books to which the claim relates.

#### Bounty (Commercial Motor Vehicles) Act 1978

- . Section 14E is repealed and is replaced by new section 22B (Availability of bounty), similar to the new section 10AA for the Bounty (Bed Sheeting) Act 1977 on page A1 hereto.
- . Section 23 is repealed and a new Section 23 (Appropriation) is substituted, similar to the new Section 22 for the Bounty (Bed Sheeting) Act 1977 on page A2 hereto.

#### Bounty (Computers) Act 1984

- . The definitions of "bountiable modem" and "bountiable multiplexer" contained in subsection 3(1) are amended slightly to align those definitions with those appearing in the Customs Tariff Act 1982, as follows:
  - the definition of "bountiable modem" is amended to extend the meaning of the statutory definition to include modems with operational transmission speeds of 300 binary digits per second or greater.
  - the definition of "bountiable multiplexer" is amended to extend the meaning of the statutory definition to include multiplexers that have varying operational transmission speeds or not more than 2,500,000 binary digits per second.
- . A new subsection 13(1A) is added to the claims for payment of bounty section, to provide that a claimant may not make a claim for bounty if the amount of bounty is less than \$200 or such other amount as the Comptroller-General

determines in writing. This minimum claims threshold is similar to that appearing in all recent Bounty and Subsidy Acts, and is designed to prohibit claims for small amounts, on the grounds that the administrative costs involved in processing such claims far outweighs the intended benefit to the claimant.

- Paragraph 13(2)(c) is amended by requiring the signing and witnessing of a claim for payment of bounty to follow the procedure specified in the new section 19A.
- Paragraph 14(2)(C) is amended by requiring the signing and witnessing of a variation of inadequate claim to follow the procedure specified in the new section 19A.
- Subsection 15(1) is amended by adding a corporate penalty of \$5,000 for failure to lodge an acknowledgement of error where a body corporate becomes aware that a claim has been overclaimed by more than \$100. The penalty for an individual remains at \$1000. The levels of penalty are similar to those appearing in all recent Bounty and Subsidy Acts.
- Paragraph 15(2)(c) is amended by requiring the signing and witnessing of a variation of excessive claim to follow the procedure specified in the new section 19A.
- Paragraph 16(2)(c) is amended by requiring the signing and witnessing of a return of factory costs to follow the procedure specified in the new section 19A.
- Subsection 16(6) is amended by adding a corporate penalty of \$5,000 for the refusal or failure to furnish a return setting out particulars of relevant factory costs. The penalty for an individual remains at \$1000. The levels of penalty are similar to those appearing in all recent Bounty and Subsidy Acts.
- Subsection 16(7) is amended by adding a corporate penalty of \$5,000 for furnishing false or misleading information regarding factory costs. The penalty for an individual remains at \$1000 or imprisonment for six months, or both. The levels of penalty are similar to those appearing in all recent Bounty and Subsidy Acts.
- Subsection 17(1) is amended by adding a corporate penalty of \$5,000 for failure to lodge a statement in respect of the difference between the factory cost and the estimate of cost on which a claim for bounty was based. The penalty for an individual remains at \$1000 or imprisonment for six months, or both. The levels of penalty are similar to those appearing in all recent Bounty and Subsidy Acts.
- Paragraph 17(2)(c) is amended by requiring the signing and witnessing of an adjustment of a claim following a return to follow the procedure specified in the new section 19A.



A new subsection 18(2) is inserted to provide a discretion to not proceed to recover an overpayment of bounty where the amount of an overpayment of bounty 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, 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. This discretion is similar to that appearing in all recent Bounty and Subsidy Acts.
- where the Comptroller elects not to proceed for a repayment, particulars of the relevant amount shall be included in the annual report of the Australian Customs Service for the year in which the Comptroller so acted (sub-section 3).

#### Forms

New section 19A prescribes the conditions for the signing and witnessing of the various forms which are required to be lodged pursuant to the Act. Authorised persons will be permitted to submit claims or lodge returns on behalf of the legal claimant (be that claimant a natural person or a body corporate), which should assist claimants, and expedite the processing of claims by the Australian Customs Service.

#### Bounty (High Alloy Steel Products) Act 1983

Paragraph 11(3)(c) is amended to effect a drafting correction to the section reference contained in the paragraph.

#### Bounty (Injection-moulding Equipment) Act 1979

Subsections 14H(4) and (5) are omitted and replaced by new section 14HA (Availability of bounty), similar to the new section 10AA for the Bounty (Bed Sheeting) Act 1977 on page A1 hereto.

Section 23 is repealed and a new section 14Y (Appropriation) is substituted, similar to the new section 22 for the Bounty (Bed sheeting) Act 1977 on page A2 hereto.

#### Bounty (Printed Fabrics) Act 1981

New paragraph 3(2)(ca) is inserted, to add an additional exclusion from the permissible factory costs of a producer, for the purposes of ascertaining the additional value added to bountiable printed fabric by a producer of the fabric.

The additional exclusion will disregard a producer's freight and costs relating to vehicles, incurred in respect of the delivery of completed or partly completed printed fabric, from the producer's eligible factory costs incurred in the production of printed fabric.

#### Bounty (Ship Repair) Act 1986

New subsection 7(1A) is inserted, to make clear that the cost of an eligible repair shall be taken to be the gross price payable for the repair under the contract pursuant to which the repair was carried out.

- the gross price payable under a contract is reduced by the amount for any rebate or discount allowable in respect of the price, not being however a rebate or discount in respect of the value of any bounty which might become payable on the repair. In effect the value of any bounty which might become payable on a repair is not to be deducted from the contract price of that repair.

The references to "repair contract" contained in paragraph 10(3)(d) (which makes the reservation of an amount of bounty a pre-condition to receipt of a payment of bounty), subsection 12(2) (which requires repair contracts to be subject to Reservation of Bounty Regulations) and subsection 12(3) (which permits the Regulations to prescribe the maximum amount of bounty a repairer may reserve on a written repair contract), are omitted.

- Upon further examination of the reservation of bounty pre-condition, it is now considered this pre-condition is inappropriate to repair work undertaken pursuant to single repair contracts, as those contracts frequently are drawn up on short lead times to cater for emergency work. As such work cannot normally be anticipated, a reservation of bounty system would be administratively onerous on potential applicants, and result in considerable delay in the payment of claims. The amendments remove repair contracts from the reservation pre-condition, leaving only written service contracts with the requirement to reserve an amount of bounty.

BOUNTY (TEXTILE YARNS) ACT 1981

The rather extensive amendments to this Act propose to update and modernise the administrative provisions in the Act, in order to streamline the administration of it and make it consistent with the similar type provisions in Bounty and Subsidy legislation included since 1984. The amendments provide as follows;

Subsections 2(6) and 2(7) of the Act, relating to the older-style provisions for the deeming of persons as business associates, are omitted, and new subsections 2(6) and 2(7) are substituted.

- . New subsection 7 sets out the circumstances under which two persons are to be deemed associates of each other for the purposes of the Act.
- . New subsection 6 is consequential on the redrafted section 3 concerning additional value and factory costs incurred, and defines for the purposes of the Act that a reference to "costs incurred" by a producer of bountiable textile yarn during an accounting period shall be read as a reference to an amount that has become payable during that period, whether or not those costs were actually paid during the period.

Section 3 dealing with the mechanism by which the additional value added to yarn by a producer is determined, is repealed, and a new section 3 is substituted, in essence to remove the obligation on the Comptroller-General to determine the additional value added in the first instance, and place that onus instead on a claimant via the lodgement of a claim form, as is the case in all recent bounty Acts. The new section 3 provides as follows:

Additional value

- . subsection (1) deems the additional value added to bountiable yarn by a producer of the bountiable yarn (for the purpose of ascertaining the amount of bounty payable on the yarn) to be the factory cost incurred by the producer in connection with the production of the yarn.
- . subsection (2) specifies the standard classes of costs that may be included in determining the "factory cost" incurred by a producer in the production of bountiable yarn;
- . subsection (3) specifies the standard classes of costs that may not be included when determining the "factory cost" of bountiable yarn;
- . subsection (4) repeats the old subsection 3(3) that the cost of delivering polymers, fibres, yarns, dyes, bleaches, yarn lubricants, yarn additives or packaging shall be taken to be included in the cost of those goods for the purposes of their exclusion from factory cost under sub-section (3);

- subsection 5 provides that where the Comptroller is unable to verify the additional value added to bountiable yarn by a producer of the bountiable yarn, or where he or she forms the opinion that a cost included in the factory cost by reference to which the additional value added to the yarn by a producer is ascertained, is incorrect or overestimated, or has been fixed to obtain an increase in bounty, etc, the Comptroller may determine a value added which he or she considers appropriate;
- the determination remains reviewable by the Administrative Appeals Tribunal (paragraph 21(b)),

Section 4, the uniformity provision, is amended by omitting a reference to "the Minister", which is unnecessary as the general administration of the Act has been transferred to the Comptroller-General of Customs, pursuant to the Customs Administration (Transitional Provisions & Consequential Amendment) Acts of 1985 and 1986.

Section 9 dealing with the requirement that bountiable yarn be of good and merchantable quality, is repealed, and a new section 9 is substituted.

#### Good quality of bountiable yarn

- New section 9 provides that where the Comptroller declares in writing that in his or her opinion, the bountiable yarn is not of good and merchantable quality, bounty is not payable in respect of that yarn (sub-section (1)), and for any bounty which has been paid, the producer is liable to repay an amount equal to that (sub-section (2));
- the declaration is reviewable by the Administrative Appeals Tribunal (paragraph 21(c)).

A new Section 10BA is inserted to impose an obligation on producers to provide a return of costs, as follows:

#### Certain producers to give returns of costs

- New section 10BA imposes an obligation on producers of bountiable goods to furnish returns, within six months of their accounting periods, setting out particulars of the factory costs incurred by them in relation to bountiable yarn produced by them in that accounting period (sub-section (1)), on the appropriate approved form (sub-section (2));
- the Comptroller may require a producer who furnishes a return to provide a certificate, signed by a qualified accountant approved by the Comptroller, to the effect that the particulars set out in the return are correct (subsection (3));
  - when considering whether a producer of bountiable yarn should be requested to furnish a certificate, the Comptroller shall have regard to (subsection (4))

- .. the extent of the claims for bounty made by the producer during the relevant period,
- .. the expense of obtaining such a certificate, and
- .. the relation that expense bears to the claims;

the Comptroller 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 producer (subsection (5));

where a producer:

- refuses or fails to furnish a return of costs in accordance with the appropriate approved form, he or she shall be liable to a pecuniary penalty of \$1000 for a natural person, or \$5000 for a body corporate (subsection (6));
- furnishes information or estimates which, to the knowledge of the producer, are false or misleading in a material particular, he or she shall be liable to a penalty of \$1000, or six months imprisonment, or both for a natural person, or \$5000 for a body corporate (subsection (7)).
- fails to lodge a return of costs, the producer is not entitled to bounty, or to an advance on account of bounty unless and until the return is lodged (subsection (8)).

A new Section 10BB is inserted, which provides a procedure for the adjustment of claims for bounty resulting from any differences which appear in a producer's claim for bounty and that producer's subsequent return of costs (new section 10BA), as follows:

#### Adjustment of claims following returns

New Section 10BB provides that in the the event of any differences relating to particulars of factory costs the producer is required to lodge with his return of costs a statement in respect of the difference. Failure to do so renders the producer liable to a penalty of \$1000 for a natural person, or \$5000 for a body corporate (subsection (1)).

- the producer is also not entitled to bounty or an advance on account of bounty, unless and until the statement is lodged (subsection (2));

after examining the statement the Comptroller may either (subsection (4));

- approve the payment of any additional amount owing to the producer as a result of balancing the claim and return; or

- serve on the producer a demand for repayment if the overpayment was in excess of \$100; or
- decline to adjust the payments of bounty made in respect of claims lodged by the producer:
  - .. decisions of the Comptroller for the above purposes are reviewable by the Administrative Appeals Tribunal (paragraphs 21 (dda), (ddb) and (ddc));
  - .. the Comptroller is required to give notice in writing to the producer setting out the decision (subsection (6)).

Subsection 10C(1) is amended to allow the Comptroller-General to examine statements made pursuant to section 10BB of the Act and to, where necessary, cause to have a demand of repayment on overpaid bounty served on the claimant.

Section 12 dealing with the obligation on bounty claimants to keep accounts, etc, is repealed, and a new section 12 is substituted, along the lines of the new accounts provisions in bounty legislation, as follows:

New Section 12 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 (subsection (1))); and
- . retained for at least 3 years after the date of lodgement of a claim for bounty pursuant to section 10 (subsection (2)).

Section 15 relating to the powers under the Act to inspect premises and documents, is amended by increasing the penalty for not providing authorised officers with reasonable facilities and assistance whilst the authorised officer conducts stock-taking or is inspecting accounts, from \$500 to \$1000 (for natural persons) or \$5000 (for body corporates).

- . This amendment does not apply to offences committed before the commencement of this amendment (i.e until 30 days after the date of Royal Assent - (sub-clause 3(2)).

Subsection 16(1) relating to the power to require persons to answer questions and produce documents, is amended to require only those persons whom a Collector or authorised officer believes on reasonable grounds may be capable of giving information relevant to the operation of this Act to give such information, and by requiring the attendance before the Collector or authorised officer to be at a reasonable time.

A new subsection 16(1B) is inserted, creating an offence for not disclosing that records prepared by one person which are produced by another person in pursuance of a notice under sub-clause (1) are false or misleading, where the latter person knows them to be false or misleading;

Penalty for breach - \$1000, or 6 months imprisonment or both (natural person) or \$5000 (body corporate).

- A new subsection 16(1A) requires any notice issued by a person required to give information to a Collector or authorised officer pursuant to subsection 16(1) to set out the effects of subsection 16(1B).
- Section 18 dealing with offences under the Act, is repealed, and a new section 18 is substituted, remaking the offence provision along similar lines to those in recent Bounty Acts;

### Offences

New Section 18 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 (subsection (1));
- Penalty \$1000, or 6 months imprisonment or both (natural person) and \$5000 (body corporate);

obtaining or attempting to obtain bounty that is not payable (subsection 18(2));

- Penalty - fine not exceeding \$10,000 or imprisonment for five years, or both (natural person) and a fine not exceeding \$50,000 (body corporate);
- this offence is an indictable offence, which may be heard and determined in a court of summary jurisdiction if the court is satisfied it is proper to do so, and the defendant and prosecutor consent (subsection 18 (9) and (10));

.. where a Court of Summary jurisdiction convicts a person of an offence under sub-section (2) the penalties that the court may impose are \$2000 or imprisonment for 12 months, or both (natural person) or \$10,000 (body corporate) (subsection 18(11));

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 (subsection (3));

- where, in proceedings for an offence against sub-sections (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 (subsection (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 (subsection (5)).

#### Time for Prosecutions

A new section 18A is created, providing that proceedings for offences against this Act are to commence within 3 years after the commission of the offence.

#### Recovery of bounty on conviction

A new section 18B is inserted empowering a court to order a person convicted of an offence under subsections 10B(1) 18(2) or (3) to refund to the Commonwealth the amount of bounty wrongfully obtained, in addition to imposing the penalty prescribed in those subsections against that person (subsection (1)).

- Subsections (2) to (6) provide a procedure to ensure that amounts of bounty to be refunded under subsection (1) do not fail to be recovered due to jurisdictional difficulties.

Section 20, the Ministerial delegation provision, is repealed. As discussed in the clause note to section 4, the general administration of this Act is vested in the Comptroller-General of Customs, and that office may delegate any of its powers contained in any law of the Commonwealth pursuant to section 14 of the Customs Administration Act 1985. Further, as the Minister no longer retains any powers under this Act, this section is now redundant.

Paragraph 21 (dd), relating to decisions which are reviewable by the Administrative Appeals Tribunal, is amended by the mention of 3 new reviewable decisions as a consequence of new section 10BB.

#### Subsidy (Cultivation Machines and Equipment) Act 1986

- Subsection 17(2) and subparagraph 17(4)(a)(ii)(C) are amended to effect a drafting correction to those provisions by removing the term "bounty" and replacing it with the term "subsidy".