

1984

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BOUNTY (COMPUTERS) BILL 1984

EXPLANATORY MEMORANDUM

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

"NOTES ON CLAUSES"

OUTLINE

The Bill proposes to introduce bounty assistance, for a 6 year period from 6 July 1984, on the production in Australia of certain computer hardware, computer sub-assemblies and electronic microcircuits. The Bill supersedes the Automatic Data Processing Equipment Bounty Act 1977.

The Bill gives partial effect to the Government's decision, announced on 5 July 1984, to introduce new measures designed to encourage the development of the computer hardware and software industries in Australia. The other part of the decision relating to a change in the import duties is the subject of a separate legislative amendment. The proposed bounty scheme, provides for payment of bounty at a rate representing 25% of the value added by the manufacturers to the bountiable equipment.

The value added by manufacturers is proposed to be ascertained by reference to factory costs actually incurred by them.

The Bill contains a number of provisions standard to a range of Bounty legislation already in force, including the right by authorized officers to enter at reasonable times commercial premises without warrant and to require persons to truthfully answer questions and produce documents relating to the operation of the Act. These provisions are not new to Bounty legislation.

These powers have been considered on a number of occasions by the Senate Standing Committee for the Scrutiny of Bills. The Committee has previously acknowledged the view that it is not unreasonable for persons who have been paid monies out of the public purse to expect a degree of auditing to establish that payments have been correctly made.

Provision is made for applications to be able to be made to the Administrative Appeals Tribunal for review of certain administrative decisions made under the Act.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 Short title.

Clause 2 Commencement of the Act deemed to be 6 July 1984. This is the date upon which the Government announced to be the day bounty under this Act is to take effect.

Clause 3 Defines a number of words and expressions for the purposes of the legislation and in particular defines:

- the range of computer or computer-related goods identified by reference to tariff items in Schedule 3 to the Customs Tariff Act 1982 that is to be "bountiable equipment" for the purposes of the Act
- "bounty period" to mean the period commencing on 6 July 1984 and ending on 5 July 1990
- "operating software" to have the same meaning as 'operating system software' in Australian Standard 1189 of the Standards Association of Australia, as in force from time to time.

Sub-clause (3) provides that the manufacture of bountiable equipment shall be taken to be completed at registered premises if the last substantial process in the manufacture of the equipment was carried out at registered premises.

Sub-clause (4) sets out the circumstances under which 2 persons are to be deemed associates of each other for the purposes of the Act.

Clause 4 Provides that manufacturers who have commenced manufacturing bountiable equipment will not be disadvantaged by any changes to the Tariff Act (either by tariff proposal or an Act of Parliament) that occurs in the course of their manufacture of that equipment where that change would otherwise result in disqualifying the manufactured goods from a payment of bounty.

The Bounty (Computer) Act 1984 will require amendment if equipment disqualified from bounty by reason of a tariff change is still to be eligible for the bounty after the tariff change.

Clause 5

Provides that, for the purposes of the definition of "bountiable equipment" and "computer based machine" in paragraphs 3(1)(e) and 3(1)(b) respectively, the Minister may, by notice published in the Gazette, declare a class of computer equipment or machines to be bountiable. Such a declaration, or a subsequent notice of revocation or amendment to that declaration, is required to be tabled before Parliament and is subject to the same disallowance procedures which apply in respect of regulations.

Notices of revocation or amendment which have the effect of rendering bountiable equipment no longer bountiable will not affect manufacturers who have commenced manufacturing that bountiable equipment prior to the revocation notice.

Clause 6

Deems the value added to bountiable equipment by a manufacturer of the equipment to be the factory cost incurred by the manufacturer, either in connection with the manufacture of bountiable equipment at registered premises, or in the course of arranging for another manufacturer to manufacture bountiable equipment at registered premises.

Various costs which are intended to be either included in or excluded from the "factory costs" are set out in the clause. Where the value added to bountiable equipment cannot be ascertained, or the Comptroller-General forms the opinion that factory costs stated in bounty claims are incorrect or overestimated, provision is made for the Comptroller-General to determine the value added to the bountiable equipment by the manufacturer. Determinations by the Comptroller-General are reviewable by the Administrative Appeals Tribunal (Clause 32).

Clause 7

Provides for the accounting period of a manufacturer, for the purposes of the Act, to be a financial year. Provision is made to allow the manufacturer to alter that accounting period or introduce new accounting periods of his or her choice if certain requirements are met.

Clause 8

Prohibits the exercise of any power under the Act in a manner which would result in bounty not being uniform throughout the Commonwealth.

PART II - BOUNTY

Clause 9

Provides for bounty to be payable to the manufacturer of bountiable equipment if-

- (a) all the processes in the manufacture of the equipment were carried out in Australia by the manufacturer at registered premises;
- (b) the manufacture of the equipment was completed at registered premises; and
- (c) the manufacture of the equipment was completed during the bounty period.

Sub-clause (5) provides that bounty is not payable on any bountiable equipment manufactured pursuant to a contract with the Department of Defence where that Department is accepting cost premiums to ensure that the equipment is manufactured in Australia for defence strategic reasons as part of a program known as an Australian Industry Participation program.

The purpose of this provision is to avoid conferring a double assistance to the manufacturer of bountiable equipment who receives assistance from the Department of Defence for compliance with the requirement that the equipment be manufactured in Australia.

Sub-clause (6) provides that bounty is not payable on any bountiable equipment manufactured by the Commonwealth, a State (which includes the Northern Territory) or an authority of the Commonwealth or a State (including an educational institution established by the Commonwealth or a State). This is for the reason that the bounty is designed to assist non-government enterprises to compete more effectively against import competition.

Clause 10

Provides for the amount of bounty payable in respect of bountiable equipment to be an amount equal to 25% of the value added to the equipment by the manufacturer.

Clause 11

Provides that bounty is not payable in respect of bountiable equipment where the Comptroller-General is of the opinion that the equipment is not of good and merchantable quality. This decision of the Comptroller-General is reviewable by the Administrative Appeals Tribunal (Clause 32).

PART III - PAYMENT OF BOUNTY

- Clause 12 Provides for advances on account of bounty to be made to a person on such terms and conditions as are approved by the Minister, and further provides that any excess amounts of bounty given to a person are to be repaid to the Commonwealth by that person or, where bounty subsequently does not become payable to the person, that person is liable to repay the amount received.
- Clause 13 Sets out the procedures to be followed by a person claiming bounty. A person will be required to lodge a claim on an approved form, provide certain information, sign the form and have it witnessed and then lodge it with the relevant Collector or the Comptroller-General.
- By the provisions of sub-clause (3) the Comptroller-General is then obliged to pay bounty if he is satisfied that the bounty is payable but if he is not so satisfied he is to refuse to approve payment. The decision of the Comptroller-General to either approve or refuse payment of bounty is reviewable by the Administrative Appeals Tribunal (Clause 32).
- Sub-clause (4) provides that, where, after 30 days from the date the claim was lodged the Comptroller-General makes a decision approving or refusing to approve the claim for bounty he or she is obliged to notify the claimant in writing setting out the decision.
- Clause 14 Provides that a person who considers that he or she has underclaimed bounty in his or her claim through an error may lodge a claim for the balance of the bounty which the claimant considers owing to him or her. Lodgement of such a claim is subject to the same procedures applying in respect of the original claim for bounty. After examining such a claim, the Comptroller-General is to approve payment of the additional amount if he or she is satisfied that the claimant is entitled to be paid the additional amount of bounty, or if not satisfied, refuse to pay. Where after 30 days the Comptroller-General makes a decision approving or refusing to pay the additional amount he or she must serve the claimant a written notice setting out the decision. A decision to refuse payment is reviewable by the Administrative Appeals Tribunal (Clause 32).

Clause 15

Provides that where a claimant becomes aware that he or she has, through an error, made an overclaim of bounty by more than \$100, the claimant shall lodge an acknowledgement of the error within 28 days after discovering the error. The acknowledgment is to be on an approved form and is to include such information as is required by the form, is to be signed and witnessed and sent to the relevant Collector or the Comptroller-General. Where the Comptroller-General, after examining the acknowledgement, is satisfied that there has been an overpayment by more than \$100 he or she shall cause to be served on the claimant a demand for the repayment of the overpayment. The decision by the Comptroller-General that the overpayment exceeds \$100 is reviewable by the Administrative Appeal Tribunal (Clause 32).

Clause 16

Provides that manufacturers of bountiable equipment are required to furnish returns within 6 months of each accounting period setting out particulars of the factory cost incurred in the manufacture of bountiable equipment. The return has to be on an approved form, must include such information as is required by the form, is to be signed and witnessed and sent to the relevant Collector or the Comptroller-General. The Comptroller-General may require a manufacturer 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.

Sub-clause (4) sets out the matters which the Comptroller-General shall have regard to when considering whether a manufacturer of bountiable equipment should be requested to furnish a certificate.

Sub-clause (5) provides that the Comptroller-General shall not refuse to approve a qualified accountant unless he or she is satisfied that it would be inappropriate to do so because of an association between the accountant and the manufacturer.

Sub-clause (6) provides for a penalty of \$1000 for refusal or failure to furnish a return in the appropriate manner where the manufacturer is capable of doing so.

Sub-clause (7) provides for a penalty of \$1000 or 6 months imprisonment or both for furnishing information or estimates which, to the knowledge of a manufacturer, are false or misleading in a material particular.

Clause 17

Provides for adjustment of claims for bounty to overcome any differences in factory costs between the claim for bounty and the subsequent return required to be lodged.

Under sub-clause (1) the manufacturer is required to lodge with the return a statement in respect of the difference, and a penalty is provided where there is a contravention of this requirement.

Sub-clause (2) provides that the statement shall be on an approved form, include such information as is required by the form and be signed and witnessed.

Sub-clause (3) provides that the Comptroller-General, after examining the statement may, as the case may be, approve the payment of any additional amount owing to the manufacturer as a result of balancing the claim and return, or serve on the manufacturer a demand for the repayment of any overpayment in excess of \$100. The decision of the Comptroller-General in: refusing to approve a payment owing to the manufacturer, assessing overpayments at over \$100 or refusing to adjust payments of bounty made in respect of claims lodged by the manufacturer are decisions reviewable by the Administrative Appeals Tribunal (Clause 32).

The Comptroller-General is required to give notice in writing to the manufacturer setting out the decision under this section.

Clause 18

Provides that the Comptroller-General shall serve a demand for repayment of an overpayment in excess of \$100 where the Comptroller-General discovers such an overpayment other than through an acknowledgement under clause 15 or a statement under clause 17.

Clause 19

Provides for the right of the Commonwealth to recover amounts owing to it in cases where: a person claims bounty which is not or does not become payable to him (clause 12), a person has overclaimed for bounty (clause 15), an overpayment is discovered following adjustment to claims made after returns have been lodged (clause 17), or the Comptroller-General discovers an overpayment of bounty (clause 18).

Sub-clause (2) provides that amounts owing to the Commonwealth resulting from any of the situations described above may be deducted from any amount that is payable to the person under the Act, and where such a deduction is made the amount of the deduction also represents a payment to the person of the amount payable to him or her under the Act.

PART IV - ADMINISTRATION

Clause 20 Contains provisions generally standard to Bounty Acts for registration of premises subject to conditions or requirements to be observed or complied with before and after registration. Includes a provision which restricts registration of the premises of applicants who were not engaged in the manufacture of bountiable equipment on 6 July 1984, unless in the opinion of the Minister the registration of those premises would promote the orderly development in Australia of the industry manufacturing bountiable computer equipment.

This restriction is directed at ensuring that maximum assistance is accorded to manufacturers engaged in the manufacture of the motors at the time of the Government's announcement of the introduction of the scheme. The admission of other manufacturers to the scheme will only be permitted if such admission will not act to the detriment of the established manufacturers.

Sub-clause (12) provides for the Minister to cancel registration on any of the grounds stated in that sub-clause.

A decision of the Minister to refuse to register premises pursuant to paragraph 20(3)(b) is reviewable by the Administrative Appeals Tribunal (Clause 32).

Clause 21 Provides that eligibility for bounty is conditional upon the maintenance of appropriate commercial records by the person to whom bounty is payable. That person is required to retain those records for at least 3 years after the completion of the manufacture of the equipment.

Clause 22 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.

Clause 23 Empowers the Minister to appoint authorized officers upon whom certain administrative functions are to be conferred.

Clause 24 Empowers an authorized officer to enter premises, inspect or take stock of any bountiable equipment, inspect any process in the manufacture of any bountiable equipment, inspect and take copies of accounts, books, documents and other records involving such bountiable equipment.

Sub-clause (2) creates an offence for failure to provide reasonable facilities and assistance for the effective exercise of an authorised officer's powers.

Clause 25 Empowers a Collector or an authorized officer to require certain persons to attend before him or her to answer questions and produce documents in relation to bountiable equipment and provides for withholding of bounty payments until the requirements of this clause are met. The Collector or an authorized officer must believe on reasonable grounds that the person is capable of giving information relevant to the operation of the Act. Persons who are capable of giving such information may in the case of this Act be persons who purchased the equipment from the manufacturer. However, the purchase of equipment from a manufacturer in itself would not be sufficient ground to require a purchaser to provide information.

Sub-clause (4) creates an offence for not disclosing false or misleading records prepared by another person and produced in pursuance of a notice under sub-clause (1) where the person producing such records knows them to be false or misleading.

Sub-clause (6) prevents the use, in proceedings against the person, of truthful, self-incriminating answers given and documents produced by that person.

Clause 26 Provides for a Collector or an authorized officer to examine, on oath or affirmation, persons attending before him or her.

Clause 27 Creates offences for -

- (a) refusing or failing to attend before a Collector or an authorized officer, to take an oath or make an affirmation, to answer questions or produce documents when so required under the Act;
- (b) obtaining or attempting to obtain bounty that is not payable or the making of false or misleading statements; and

- (c) presenting certain records that are known to be false or misleading in a material particular.

Sub-clause (4) prevents a person from being prosecuted twice for offences against sub-clause 27(2) and 15(1) in respect of the same claim for bounty.

- Clause 28 Provides that a prosecution for an offence against the Act may be commenced at any time within 3 years of the offence.
- Clause 29 Empowers a court to order a person convicted of an offence under sub-clauses 15(1) or 27(2) or (3) to refund to the Commonwealth the amount of bounty wrongfully obtained, in addition to imposing a penalty against that person.

PART V - MISCELLANEOUS

- Clause 30 Provides for the furnishing by the Comptroller-General to the Minister, and the tabling in Parliament by the Minister, of returns in relation to the payment of bounty.
- Clause 31 Provides powers of delegation.
- Clause 32 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.
- Clause 33 Requires persons whose interests are affected by an administrative decision of a kind referred to in clause 32 to be notified of the rights of review of those decisions by the Administrative Appeals Tribunal.
- Clause 34 Is a standard appropriation provision.
- Clause 35 Provides that the penal provisions of the Act do not operate prior to the day on which this Bill receives the Royal Assent.
- Clause 36 Is a standard regulation making power.

