

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BOUNTIES BILL 1986

EXPLANATORY MEMORANDUM

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

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## BOUNTIES BILL 1986

### OUTLINE

This Bill proposes to introduce a standing Bounty Act, incorporating standard administrative provisions for new bounty schemes, and a mechanism for the introduction of the schemes by Ministerial Gazette Notices, rather than substantive Acts, to enable more rapid implementation of Government decisions relating to bounty assistance.

The principal provisions contained in the Bill provide;

- (i) a facility to introduce new bounty assistance schemes by bounty notices declared in writing by the Minister and published in the Gazette, (Clause 6);
  - . such notices are to be subject to the requirements of sub-section 23 of the Industries Assistance Commission Act 1973, which prohibits ministerial action involving assistance to industry without a current report on the particular industry or industries concerned from the Industries Assistance Commission;
  - . such notices are subject to disallowance by the Parliament in the same way that Regulations might be disallowed (Clause 10), and provision is made for the repayment of amounts paid under disallowed schemes in certain circumstances (Clause 11);
- (ii) a facility to amend bounty schemes by regulation in the following limited circumstances (Clause 8);
  - . to enable an extension of a bounty scheme for a period of up to 6 months,
  - . to vary a rate at which bounty is payable, or the amount of bounty payable, or the manner by which the amount payable is calculated,
  - . to vary the range of goods eligible for bounty under a scheme, or the eligibility criteria for receipt of bounty, provided such changes are consistent with the original intentions and purposes of the scheme;

- (iii) a facility to revoke bounty notices, by Ministerial notice in writing and published in the Gazette (Clause 9), subject to disallowance by the Parliament in the same way that Regulations might be disallowed (Clause 10);
- (iv) a range of administrative powers and requirements designed to standardise the administration of bounty schemes, in particular,
  - (Clauses 15 to 19), relating to the mandatory inclusion in schemes of provisions which detail the kinds of goods for which bounty is payable, the persons to whom bounty is payable, the period or periods for which bounty is payable, the time at which bounty becomes payable, and the amount of bounty (ie, the rate, amount, or manner in which the amount is calculated) that is payable;
  - (Clauses 21 to 25), relating to the various accounting formulae to determine or calculate the amount of bounty payable under a particular scheme;
  - (Clauses 26 to 33), relating to the various administrative requirements for the lodgement of bounty claims and the obligations imposed on bounty claimants to verify and adjust claims in specified instances;
  - (Clauses 40 to 48), relating to the various powers to investigate matters relevant to particular schemes, and the penalties applicable for offences against the provisions of the Bill; and
  - (Clauses 49 to 55), relating to various miscellaneous matters previously contained in individual Bounty Acts, including the power of delegation, review by the Administrative Appeals Tribunal, the appropriation of monies to finance schemes, and the standard regulation-making power.

#### Financial Impact Statement

The Bill does not in itself involve any financial outlay by the Commonwealth. However, bounty schemes established under the Bill will involve outlays, the extent of which will vary from scheme to scheme. For established schemes, estimates of expenditure will be given in the Budget papers in the usual way. For new schemes, financial details will be provided at the time of announcement by the Government of the establishment of the scheme.

## 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.

#### General administration of Act

Clause 3 provides for the Comptroller-General of Customs to have the general administration of the Act. This has particular relevance to paragraph (b) of the definition of a "law of customs or excise" in section 3 of the Customs Administration Act 1985.

#### Interpretation

Clause 4 sub-clause (1) defines a number of words and expressions for the purposes of the legislation, and in particular defines:

- "bountiable goods" to be those goods upon which bounty is payable on the production of the goods in Australia,
- "bounty scheme" to mean a scheme for the payment of bounty set out in a bounty notice (Clause 6), including such a scheme as amended by regulations (Clause 8),
- "material", which is referred to in Clause 19, to include both a part and a component,
- "producer", which is relevant to the various formulae for the payment of bounty (ie factory cost, Clause 22, value added - Clause 23, sales derived value added - factory cost - Clause 24, sales value - Clause 25) to mean that person who is a producer of the goods as defined by the bounty scheme relating to those goods,
- "production service", which is relevant to the production of manufactured goods, to include;
  - (a) computer software services,
  - (b) design, system engineering, testing, research or development services,

(c) heat treatment and

(d) other services prescribed by regulation;

sub-clause (2) makes it clear that bountiable goods are relevant to a particular bounty scheme only if those goods are declared to be bountiable under that scheme;

sub-clauses (3) and (4) are technical drafting clauses, which cross-reference the references to registered premises or registered persons throughout the Act to Clauses 36 and 37, dealing with the registration of premises and persons respectively;

sub-clause (5) defines for the purposes of the Bill, especially Clauses 21 to 25 relating to accounting terms to determine or calculate the amount of bounty payable under a particular scheme, that a reference to costs incurred by a producer of bountiable goods in a period shall be read as a reference to an amount that has become payable during that period whether or not it has been paid in the period;

sub-clause (6) is consequential on the Parliamentary disallowance power for bounty notices provided for in Clause 10. This sub-clause deems a bounty notice to have been disallowed if

- either House of Parliament disallows the notice pursuant to Section 48 of the Acts Interpretation Act 1901

that section is proposed to be slightly varied by Clause 10, to provide a power of disallowance where, within 7 sitting days after any notice has been laid before that House (notices must be laid before each House within 7 sitting days of the House after the making of the notices), a resolution disallowing that notice is passed or a notice of motion to disallow the bounty notice is not withdrawn or otherwise disposed of within 7 sitting days of the giving of that disallowance notice.

sub-clause (7) deems (for the purposes of this Act and bounty schemes made pursuant to it) the Customs Tariff Act to be amended on the same day specified in a Customs Tariff alteration proposed in the Parliament to amend Schedule 3 of that Act

sub-clause (8), which is relevant to clauses relating to the payment of bounty on the production of goods, deems such production to have commenced where either the assembly of the goods, or of part of the goods, has commenced, or a process required for the production of those particular goods has been commenced;

sub-clause (9) sets out the circumstances under which two persons are to be deemed associates of each other for the purposes of the Act.

### Uniformity

Clause 5 prohibits the exercise of any power under the Act or a bounty scheme made pursuant to it, in a manner which would result in bounty not being uniform throughout the Commonwealth.

## PART II - BOUNTY NOTICES

### Bounty Notices

Clause 6 introduces the proposed new mechanism for the implementation of bounty assistance measures, as follows;

- sub-clause (1) empowers the Minister to introduce, by notice in writing published in the Gazette, a bounty scheme providing for the payment of bounty on the production in Australia of the goods specified in the scheme;
- a bounty scheme is to have effect from and including the day specified in the relevant notice, provided that date is not earlier than 6 months before the date of publication in the Gazette (sub-clause 2);
- bounty is not to be payable under a scheme set out in a notice on goods the production of which was completed before the day on which the notice came into effect, other than goods that were stock in hand on that day (sub-clause 3);
- the new procedure is subject to
  - . the constraints of Section 23 of the Industries Assistance Commission Act 1973, which prohibits this type of ministerial action affecting industries assistance without a current report (ie less than 12 months old) on the industry or industries by the Industries Assistance Commission, and
  - . Parliamentary disallowance (see Clause 10).

### Bounties payable under bounty notices

Clause 7 is a technical provision, which provides that bounty is payable pursuant to the relevant bounty scheme set out in a bounty notice (Clause 6) or, where that scheme is amended as provided in proposed Clause 8, that amended scheme.

### Modification of bounty schemes

Clause 8 provides the facility for the amendment of bounty schemes, by regulation, in the following limited circumstances;

- to effect an extension of a bounty scheme for a period not exceeding 6 months (paragraphs 2(a) and (b)), provided this is done prior to the expiry of the scheme (sub-clause 3);
- to vary the rate at which bounty is payable under the scheme, or the amount of bounty payable under the scheme, or the manner in which an amount of bounty payable under the scheme is calculated (paragraphs 2(c), (d) and (e));
- to vary the range of goods eligible for bounty assistance (paragraph 2(f)), provided that the varied goods are similar to the goods in respect of which bounty was originally payable, and are consistent with the intentions of the original scheme (sub-clause 4);
- to vary the eligibility criteria for the provision of bounty assistance (paragraphs 2(g) and (h)), provided such variations are consistent with the purposes of the original scheme (sub-clause 5);

sub-clause (6) protects the rights and entitlements of bounty claimants following the variations by regulation permitted by sub-clause (2), by deeming the production of goods commenced prior to the date of such changes (and undertaken pursuant to a firm order) to have been completed prior to the date of the changes, thus preserving the application of the scheme to such goods;

sub-clause (7) is a technical provision, which defines modifications (amendments) for the purposes of the section as including additions, omissions and substitutions.



### Revocation of bounty notices

Clause 9 provides a power for the revocation of bounty notices, as follows;

- sub-clause (1) empowers the Minister to revoke, by notice in writing published in the Gazette, a bounty notice,
  - . a revocation is to have effect from and including the day specified in the notice, not being a day earlier than the day of publication of the notice in the Gazette (sub-clause (2));
- sub-clause (3) protects the rights and entitlements of bounty claimants, following the revocation of a bounty notice, by deeming the production of goods commenced prior to the date of such revocation (and undertaken pursuant to a firm order) to have been completed prior to the date of the revocation, thus preserving the application of the scheme to such goods;
- sub-clause (4) preserves the legality of actions taken under a revoked bounty scheme prior to the revocation, in conjunction with Section 50 of the Acts Interpretation Act 1901.

### Disallowance of Notices

Clause 10 preserves the ability of the Parliament to scrutinise and, if necessary, disallow bounty notices made under Clause 6 and revocation notices made under Clause 9, by applying the tabling and disallowance provisions applicable to regulations under sections 48 to 50 of the Acts Interpretation Act 1901 to such bounty notices.

### Effect of disallowance of bounty notice on bounty

Clause 11 details the effect of a disallowance pursuant to Clause 10 on amounts of bounty which have already been paid, or which have become payable, as follows;

- sub-clause (1) deems amounts of bounty paid before either House of Parliament disallows a notice to have been lawfully

paid, and amounts which have become payable may be lawfully paid, subject to sub-clauses (2) and (3);

- sub-clauses (2) and (3) grant the Parliament the right to stop the payment of bounty which has become payable and recover all or a portion of any amounts already paid following a disallowance, where

each House of Parliament, within 3 sitting days of the House after the day on which the notice was disallowed, passes a resolution to the effect that amounts which became payable by way of bounty in accordance with the disallowed scheme are not payable

### PART III - BOUNTY SCHEMES

#### DIVISION 1 - PROVISIONS APPLYING TO BOUNTY SCHEMES

##### Good quality of bountiable equipment

- Clause 12 provides that equipment is to be of good and merchantable quality to be eligible for the payment of bounty;
- where the Comptroller declares in writing that, in his or her opinion, the equipment is not of such quality, bounty is not payable in respect of that equipment. That declaration is reviewable by the Administrative Appeals Tribunal (paragraph 52(1)(a)).

##### Bounty not payable to Commonwealth

- Clause 13 provides that bounty is not payable to the Commonwealth, a State, or to a Commonwealth or State authority, unless the scheme specifically permits the payment of bounty to those bodies.

##### Bounty only payable once

- Clause 14 provides that where bounty has become payable under an Act,
- bounty cannot be paid under a scheme unless the scheme permits bounty to be paid under both the Act and the scheme (sub-clause 1),
  - where bounty has become payable under a bounty scheme,

bounty cannot be paid under an Act unless the scheme permits the payment of bounty under both the Act and the scheme (paragraph 2(a)), and

bounty cannot be paid under another scheme unless either of the schemes permits the payment of bounty under each of the schemes (paragraph 2(b)).

## DIVISION 2 - PROVISIONS OF BOUNTY SCHEMES

This Division of the Bill stipulates the mandatory requirements for all bounty schemes, (essential provisions-Clauses 15 to 19) and gives a legislative power for individual schemes to include specific and particular conditions relating to the payment of bounty for a particular scheme (optional provisions-Clause 20), as follows:

### Essential provision - goods

Clause 15 requires a bounty scheme to provide that;

- bounty is payable on the production in Australia of the goods specified in the bounty notice (sub-clause 1), and
- the goods on which bounty is payable are to be defined by reference to the particular item which would attach to such goods in the Customs Tariff Act 1982 if the goods were imported into Australia.

### Essential provision - persons to whom bounty payable

Clause 16 requires the bounty scheme to specify the person to whom bounty is payable.

### Essential provision - bounty periods

Clause 17 requires the bounty scheme to;

- specify the period or periods to which the scheme is to apply (sub-clause 1), and
- provide that

a person is not entitled to receive a payment of bounty unless the production of goods has taken place during the period or one of the periods, to which the scheme applies, (paragraph 2(a)), or

a person is not entitled to receive a payment of bounty unless the production of goods was completed or is completed, during the period, or one of the periods, to which the scheme applies (paragraph 2(b)).

#### Essential provision - time of payment

Clause 18 requires that a bounty scheme to specify the time at which bounty becomes payable in respect of goods produced under the scheme.

#### Essential provision - amount of bounty

Clause 19 requires a bounty scheme to specify the method by which the amount of bounty under the scheme is to be determined, including,

- the rate at which bounty under the scheme is payable,
  - the amount of bounty payable in respect of bountiable goods, or
  - the manner in which the amount of bounty payable in respect of goods is calculated
- such rate, amount or manner of calculation is related to such things as the quantity, weight, volume or size of the goods, the various accounting terms in Clauses 22-25 used to calculate the amount of bounty payable, or any other aspect or thing relating to the goods.

#### Optional provisions

Clause 20 empowers a bounty scheme to provide for specific conditions relating to the payment or eligibility for payment of bounty (sub-clause 1), including, but not limited to, conditions relating to;

- the production of bountiable goods being carried out at registered premises or by registered persons; the factory cost incurred by a producer in the production of goods being incurred, in whole or in part, in Australia; or an end use requirement (i.e. sale, disposal or use of the goods) being complied with (sub-clause 2);

- a bounty scheme may include provision for the maximum amount of money available for payment of bounty under the total scheme, or a period of the scheme, or to a person under the scheme or a person during a period of the scheme (sub-clause 5);
- a bounty scheme may provide that bounty is payable in respect of goods that were stock in hand on the day on which the bounty notice came into effect (sub-clause 6).

### DIVISION 3 -- ACCOUNTING TERMS

#### Accounting period

Clause 21 provides that the accounting period of a manufacturer of bountiable equipment, for the purposes of the Act, is to be the 12 month accounting period of the manufacturer. If the manufacturer has no such accounting period, the accounting period for the purposes of the Act is to be the financial year.

#### Factory Cost

Clause 22 identifies the various costs that are to be included or excluded from the factory cost incurred by a producer in the manufacture of bountiable goods for the purposes of the various formulae used to calculate the amount of bounty payable under a scheme;

- factory cost can include:

- . factory overhead charges; wages, salaries, and other remuneration; costs of material delivered into the producer's store; and the cost of any process carried out or any service provided by the producer or another person (sub-clause 2),

- . expenditure during an accounting period on research and development or costs incurred during an accounting period in relation to system design, system engineering, software, or testing relating to the production of bountiable goods carried out during that period (sub-clause 3),

- factory cost is to specifically exclude;
  - . the amounts of any Government grants received by a producer of bountiable goods in respect of the production of research relating to, or the development of, those bountiable goods (sub-clause 4),
  - . twenty-five other classes of costs charges or receipts (including such additional costs which may be prescribed by regulation) in connection with the production of bountiable goods, unless the bounty scheme otherwise provides (sub-clause 5).

#### Value Added

Clause 23 introduces the value added formula for calculating the amount of bounty payable on goods, and deems that accounting mechanism to be the amount ascertained in accordance with the formula  $A - (B + C + D)$  where, unless the particular scheme deems otherwise (sub-clause 2);

- A is the factory cost incurred by a producer of the goods (as set out in Clause 22),
- B, C and D are the various costs included in that factory cost, which are deemed not to be part of the value added by the producer to the goods in Australia; specifically excluded is,
  - . the cost of materials supplied to the producer for use in the production or packaging of the goods,
  - . the cost of any process carried out, or production service provided, by the producer at non-registered premises or by the producer or by a person, on behalf of the producer, outside Australia, (see sub-clause 4(1) for definition of "production service" and
  - . the interest on money provided for the purpose of financing research or development outside Australia.

- where the Comptroller is unable to verify the value added to bountiable goods by a producer of the goods, or where he or she forms the opinion that a cost included in the factory cost of the goods is incorrect or over-estimated, or where he or she forms the opinion that some other cost is incorrect or under-estimated, the Comptroller may determine a value added which he or she considers appropriate (sub-clause 3);
- . such a determination is reviewable by the Administrative Appeals Tribunal (sub-clause 52(2)).
- sub-clause 4 further excludes from value added determinations any value added to goods in respect of which bounty under an Act or another bounty scheme has become payable. This is designed to prevent "double dipping" in respect of Commonwealth payments of bounty.

#### Sales Derived Value Added Factory Cost

Clause 24 introduces the sales derived value added formula for calculating the amount of bounty payable on goods, and deems that accounting mechanism to be the amount ascertained by the formula  $E - (F + G + H + I)$ , where, unless the scheme otherwise provides (sub-clause 2);

- E is the sales value of the goods;
- F, G, H and I are various costs which make up the sales price, which are to be specifically excluded from that price; specifically excluded is;
  - . the amount included in the price of the goods for delivery or the cost of freight paid by the producer for the delivery of the goods,
  - . the annualised cost of administration, sales and services,
  - . the cost of materials supplied for the production and packing of goods,
  - . the cost of any process carried out at registered premises by a person other than the producer or a person employed by the producer, not being a process consisting of design, research or development carried out in Australia on behalf of the producer.

- where the Comptroller is unable to verify the sales derived value added factory cost of bountiable goods, or where he or she forms the opinion that a price or cost included in the formula is incorrect or under-estimated, the Comptroller may determine a sales derived value added factory cost which he or she considers appropriate (sub-clause 3);

- . such a determination is reviewable by the Administrative Appeals Tribunal (sub-clause 52(2)).

- . inability to verify costs might arise due to a failure on the part of the producer to supply information or to allow inspection of his books or accounts (sub-clause 4).

### Sales Value

Clause 25 applies to bountiable goods if the relevant bounty schemes contain a reference to either the sales value of the goods or the sales derived value added factory cost of the goods.

- generally speaking, the sales value of goods is, subject to this clause, the price charged, or that will be charged, for the goods by the producer of the goods (sub-clause 2);

- where no charge is made for goods or parts of the goods, the Comptroller shall determine the relevant amount according to the lowest selling price paid or payable to any person who produced goods of the same kind in Australia (sub-clause 3);

- . such a determination is reviewable by the Administrative Appeals Tribunal (sub-clause 52(2));

- where the Comptroller is unable to ascertain the price charged for materials used in bountiable goods, that price shall be taken to be the amount estimated by the Comptroller to be an appropriate price, having regard to all relevant circumstances (sub-clause 4);



The Comptroller will be taken to be unable to determine the price relating to goods where, after taking all reasonable steps to ascertain or verify the information necessary, the producer of the goods fails to supply information or accounts or books, or, there were no relevant selling prices (sub-clause 6);

- where the Comptroller is satisfied the price of goods was influenced by a relationship between the producer and the purchaser, and the price is higher than it would otherwise have been, the Comptroller is empowered to determine the price that would have been charged had the relationship not existed (sub-clause 7);
- for the purposes of the Act and bounty schemes, the "price of goods" shall be taken to be the gross price that the producer charged for the goods (including freight; but excluding any prescribed process or operation carried out by or on behalf of the producer), less any rebate or discount allowable by the producer in respect of the price (not being a rebate or discount for cash payment or prompt payment) (sub-clause 8).

## DIVISION 4 - PAYMENT OF BOUNTY UNDER BOUNTY SCHEMES

Advances on account of bounty

Clause 26 authorises the payment of advances on account of bounty, on such terms and conditions as are approved by the Comptroller in writing (sub-clause 1):

- where the amount of bounty received by way of advances exceeds the amount of bounty that subsequently becomes payable on the goods, or where bounty does not become payable in respect of the goods, the amount of the excess, or the entire amount, as the case may be, is repayable to the Commonwealth (sub-clauses (2) to (4)).

Claims for payment of bounty

Clause 27 sets out the procedures to be followed in claiming bounty:

- a claimant is required to (sub-clause 3):
  - . lodge a claim on an approved form providing such information as is, and such estimates as are, required by the form;
  - . sign and witness the form as required, and
  - . lodge the form with a Collector for a State, or with the Comptroller, within 12 months after the day on which the last condition for the payment bounty in respect of those goods became satisfied;
  - .. a claim may not be made for bounty that is less than an amount specified in the scheme, not being an amount higher than \$200, or, if another amount is prescribed, that other amount (sub-clause 2);
- the Comptroller is then obliged to examine the claim and either (sub-clause 4):
  - . approve in writing the payment of the amount, or
  - . where the amount is different from the amount for which the claim was made, with the difference being less than \$50, and the Comptroller is

satisfied the difference is not attributable to the person deliberately overclaiming or underclaiming the amount of bounty, the Comptroller shall approve, in writing, the payment of the amount claimed, 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 52(1) (b) and (c));
- the Comptroller is obliged to provide to the claimant a notice setting out the decision where there is a delay in the processing of the claim, or the claim is unsuccessful (sub-clause 5).

#### Variation of inadequate claims

Clause 28 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 the claimant's entitlement (sub-section (1)):

- the procedure for the lodgement of a subsequent claim for the balance of bounty which is considered to be owing is identical to the procedures that apply to original claims for bounty (see sub-clause 27(3) (sub-clause (2));
- again, similar to the procedures that apply to original claims for bounty, (see sub-clause 27(4), the Comptroller is obliged to examine the further claim for bounty and either approve or refuse the further payment of bounty (sub-clause (3));
- the decisions of the Comptroller are reviewable by the Administrative Appeals Tribunal (paragraphs 52(1) (d) and (e));
- the Comptroller is obliged to furnish the claimant with a notice in writing setting out the decision where there is a delay in the processing of the claim or the claim is unsuccessful (sub-section 5);

Variation of excessive claim

- Clause 29 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 the claimant's entitlement (sub-clause (1)):
- the penalty for contravening sub-clause (1) is \$1,000, for a natural person, or \$5000 for a body corporate
  - the procedure for the lodgement of an acknowledgement form is similar to that governing original claims (see sub-clause 27(3)) (sub-clause 2),
  - upon examination of the acknowledgement, where the Comptroller is satisfied 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 amount of the overpayment (sub-clause 4):
  - the decision of the Comptroller for the above purposes is reviewable by the Administrative Appeals Tribunal (paragraph 52(1)(f)).

Certain producers to furnish returns of costs

- Clause 30 imposes an obligation on producers of bountiable goods under a bounty scheme to furnish returns, within six months of their accounting periods, setting out:
- particulars of the factory cost incurred by the producer in relation to bountiable goods of the kind produced in that accounting period by the producer,
    - . where value added is ascertained by reference to the factory cost referred to above - particulars of that value added; and
    - . where sales derived value added factory cost is ascertained by reference to the factory cost referred to above, particulars of that sales derived value added factory cost;
  - the procedure for the lodgement of a return of costs is similar to that governing original claims (see sub-clause 27(3)) (sub-clause 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 (sub-clause (3));

- . when considering whether a producer of bountiable equipment should be requested to furnish a certificate, the Comptroller shall have regard to (sub-clause 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 (sub-clause 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 penalty \$1000 for a natural person, or \$5000 for a body corporate (sub-clause 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 (sub-clause 7).

#### Adjustment of claims following returns

Clause 31 provides a procedure for the adjustment of claims for bounty resulting from any differences which appear in a producer's claim for bounty (clause 27) and that producer's subsequent return of costs (clause 30);

- in the event of any differences relating to particulars of factory cost (sub-clause 1), or value added costs (sub-clause 2), or sales derived value added costs (sub-clause 3), the producer is required to lodge with his return of costs a statement in respect of the difference. Failure to do so renders the claimant liable to a penalty of \$1000 for a natural person, or \$5000 for a body corporate
- the procedure for the lodgement of an adjusting statement is similar to that governing original claims (see sub-clause (27(3)) (sub-clause 4);
- after examining the statement the Comptroller may either (sub-clause 5):
  - . 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 52(1)(g), (h) and (j)):
    - .. the Comptroller is required to give notice in writing to the producer setting out the decision (sub-clause (7)),

Other adjustments of claims

Clause 32 provides that the Comptroller shall serve a demand for the repayment of an overpayment of a claim for bounty in excess of \$100, where the Comptroller discovers such an overpayment in a situation other than through an acknowledgement under clause 29 or a statement under clause 31 (sub-clause 1);

- the above decision of the Comptroller is reviewable by the Administrative Appeals Tribunal (paragraph 52(1)(k)),
- 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, the regulations or the relevant scheme, 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 (sub-clause 2);

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-clause 3).

Availability of bounty

Clause 33 provides the method for the payment of bounty where the Comptroller is of the opinion that the amount available for bounty will be insufficient to meet all valid claims during the entire scheme (sub-clause 1), or a particular period of the scheme (sub-clause 2);

- in the above circumstances, the Comptroller may, subject to regulations, if any,

- . defer the making of bounty payments under the scheme as the Comptroller considers appropriate, and
- . make bounty payments in such order as the Comptroller considers appropriate;
- where the payment of bounty to a person under a scheme has been deferred, and all money available for payment of bounty under that scheme is subsequently paid out, the person ceases to be entitled to the payment of the deferred bounty (sub-clause 3).

#### DIVISION 5 - MISCELLANEOUS

##### Effect of amendments of Tariff Act

- Clause 34 protects producers who have commenced the production of "bountiable" goods from losing their eligibility for bounty through an amendment to the Customs Tariff Act, which results in the particular goods ceasing to be classified within the tariff item nominated in the definition for "bountiable goods", and thus falling outside the scheme;
- where the production of goods is commenced before the day of the Tariff Act amendment, and completed after that day, the goods will be deemed to have been completed before the relevant day, and thus eligible for bounty, as long as the production was commenced in pursuance of a firm order placed before the amendment day (sub-clauses 1 and 2).

##### Determinations, etc

- Clause 35 provides that where, for the purposes of a bounty scheme, the Comptroller makes a determination or estimation in relation to bountiable goods, the Comptroller shall cause to be served, either personally or by post, on the producer of the bountiable goods notice of the determination or estimation made. Such a determination or estimation shall be made in writing.

##### Registration of premises

- Clause 36 sets out the requirements for the registration of premises for the purposes of bounty schemes. A pre-requisite for the payment of bounty under a scheme may be that the bountiable goods are produced at registered premises:



- registrable premises are restricted to premises that are used solely or principally for industrial or commercial purposes (sub-clause 1);
- applications for the registration of premises are to be made to the Comptroller on the approved form (sub-clause 2);
  - . the Comptroller may require an applicant for registration to furnish such further information as he or she considers necessary and may refuse registration until such further information is provided (sub-clause 10);
- on receipt of an application for registration, the Comptroller shall either (sub-clause 3):
  - . register the premises and cause a notice to that effect to be served on the applicant; or
  - . refuse to register the premises and cause a notice to that effect to be served on the applicant;
- where premises are registered, the registration shall date from the date the Notice of Registration is signed by the Comptroller or such earlier date as is specified in the Notice, not being a date earlier than the first day of the earliest period to which that scheme applies (sub-clause 4);
- a Notice of Registration is to specify whether registration is in respect of all bountiable goods or restricted to a specified class of bountiable equipment and may specify the period of registration (sub-clause 5);
- regulations may prescribe conditions to be met by an applicant for the registration of premises (sub-clause 6):
  - . if the conditions prescribed are not or will not be complied with, the Comptroller shall not register the premises (sub-clause 7);
- regulations may prescribe conditions to be complied with in connection with the production of bountiable goods at registered premises (sub-clause 8):

- . if the conditions prescribed are not or will not be complied with the Comptroller shall not register the premises (sub-clause 9);
- the registration of premises which were not engaged in the production of bountiable goods prior to the day specified in the scheme will be permitted unless the Minister informs the Comptroller that the registration of the premises will not permit the orderly development in Australia of the industry comprising the production of those goods (sub-clause 11);
- registrations may be transferred on the submission of a joint application to the Comptroller and shall take effect not earlier than 6 months before the day on which the application for the transfer was made (sub-clauses 12, 13 and 14);
- the Comptroller may cancel the registration of premises where he or she becomes satisfied that any one of the following applies (sub-clause (15)):
  - . bountiable goods are not being produced at the premises;
  - . bountiable goods of the class for which the premises are registered are not being produced at the premises;
  - . the production of bountiable goods is being carried on by someone other than the person in whose name the premises are registered; or
  - . the production is not being carried out in accordance with prescribed conditions;
- a bounty scheme may provide that where a person carries out, or proposes to carry out, the production of goods at registered premises, processes carried out at other premises in Australia will be deemed to have been carried out at the registered premises (sub-clause 16);

- decisions of the Comptroller refusing the registration of premises (sub-clause 3), determining the day on which premises are to be registered from (sub-clause 4), cancelling the registration of premises (sub-clause 15) or transferring the registration of premises (sub-clauses 11, 12 and 13) are reviewable by the Administrative Appeals Tribunal (paragraphs 52(1)(m), (n) (p) and (q)).

### Registration of Persons

- Clause 37 sets out the requirements for the registration of persons under a scheme, where the scheme contains a provision to register persons for the purposes of the scheme. A pre-requisite for the payment of bounty under a scheme is that the goods may have to be produced by a person registered for the purposes of the scheme;
- applications for the registration of persons are to be made to the Comptroller in accordance with the appropriate approved form (sub-clause 2);
  - the Comptroller may require an applicant for registration to furnish such further information as he or she considers necessary and may refuse registration until such further information is provided (sub-clause 10);
  - on receipt of an application for registration, the Comptroller shall either (sub-clause 3):
    - register the person and cause a notice to that effect to be served on the applicant; or
    - refuse to register the person and cause a notice to that effect to be served on the applicant;
- where persons are registered, the registration shall date from the date the Notice of Registration is signed by the Comptroller or such earlier date as is specified in the Notice, not being a date earlier than the first day of the earliest period to which the scheme applies (sub-clause 4);

- a Notice of Registration is to specify whether registration is in respect of all bountiable goods or restricted to a specified class of bountiable goods and may specify the period of registration (sub-clause 5);

- regulations may prescribe conditions to be met by applicants for registration (sub-clause 6), or may prescribe conditions to be complied with in connection with the production of bountiable goods (sub-clause 8);

if the conditions prescribed are not or will not be complied with the Comptroller shall not register the person (sub-clauses 7 and 9);

where an applicant was not, on a day specified in a bounty scheme, engaged in the production of bountiable goods to which that scheme relates at premises in Australia, the Comptroller shall not register that person if the Minister informs the Comptroller that the registration of that person will not permit the orderly development in Australia of the industry comprising the production of those goods (sub-clause 11);

- the Comptroller may cancel the registration of a person for the purposes of a bounty scheme where he or she becomes satisfied that any one of the following applies;

the person no longer engaged in the production of bountiable goods in Australia;

where the person is registered in relation to a class of bountiable goods,

bountiable goods included in that class are no longer being produced at premises in Australia, or

prescribed conditions have not been complied with,

- Decisions made by the Comptroller refusing to register a person or cancelling the registration of a person are reviewable by the Administrative Appeals Tribunal (paragraphs 52 (1) (r) and (s)).

Accounts

- Clause 38 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 (sub-clause 2); and
  - retained for at least 3 years after the date of lodgement of a claim for bounty pursuant to clause 27 (sub-clause 1)

Securities

- Clause 39 confers upon the Comptroller the power to require a person to whom bounty could become payable to give security for compliance with the Act, any regulations made under it, and the relevant scheme. 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 52(1)(t)).

## PART IV - ADMINISTRATION

Appointment of authorised officers

- Clause 40 empowers the Comptroller to appoint officers of the Australian Customs Service as authorized officers upon whom administrative functions may be conferred for the purposes of the bounty schemes.

Stocktaking and inspection of production and accounts

- Clause 41 empowers an authorised officer to enter registered premises, or premises occupied by a registered person, to inspect any bountiable goods, any process in the production of bountiable goods, the accounts, books, documents or other records relating to the production of such goods, and take copies of any such records (sub-clause 1)

- if the occupier or person in charge of the registered premises fails to provide the authorised officer with all reasonable facilities and assistance he or she is liable to a penalty of \$1,000 or, in the case of a body corporate, \$5,000 (sub-clause 2)

#### Entry on unregistered premises

Clause 42 lists the circumstances which permit authorised officers to enter premises which are not registered for the purposes of a particular scheme or are not occupied by a person registered for the purposes of the scheme;

- where an authorised officer has reasonable grounds for believing that premises are premises where bountiable goods are stored, or are premises in which the production of any bountiable goods is taking or will take place, or are premises in which there are kept any accounts, books, documents or other records relating to the production (including the cost of production) or storage of bountiable goods, the authorised officer may make an application to a Justice of the Peace for a warrant authorising the authorised officer to enter the premises and exercise the functions of an authorised officer; (sub-clause 2)

the functions of an authorised officer are

- .. to inspect, or take stock of, any bountiable goods;
- .. to inspect any process in the production of any bountiable goods; and
- .. to inspect accounts, books, documents and other records relating to the production (including the cost of production) or storage of bountiable goods, and including the making of copies of, or taking and retaining extracts from, such records; (sub-clause 4).

- if the Justice of the Peace 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 premises to exercise the functions 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 functions of an authorised officer (sub-clause 3);

Power to require persons to answer questions and produce documents

Clause 43 empowers a Collector or an authorised officer to require certain persons to attend before him or her to answer questions and produce documents in relation to bountiable goods, and provides for the withholding of bounty payments until the requirements of this clause are met. The Collector or an authorised officer must believe on reasonable grounds that the person is capable of giving information relevant to the operation of the bounty scheme (sub-clause 1);

- sub-clause (3) creates an offence for not disclosing that records prepared by one person and 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)

- sub-clause (5) prevents the use in criminal proceedings against a person, except under sub-clause (3) or paragraph 45 (3)(a) of the Act, of self-incriminating answers given and documents produced by that person.

Power to examine on oath, etc

Clause 44 provides for a Collector or an authorised officer to examine, on oath or affirmation, persons attending before him or her.

Offences

Clause 45      Creates offences for:

- 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 pursuant to this Act (sub-clause 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 (sub-clause 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 (sub-clauses 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) (sub-clause 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 (sub-clause 3);



- penalty, \$1000 or imprisonment for 6 months, or both (natural person) and \$5,000 (body corporate).
- 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 (sub-clause 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 (sub-clause 5);

#### Time for prosecutions

Clause 46 provides for proceedings for offences against this Act to commence within 3 years after the commission of the offence.

#### Recovery of bounty on conviction

Clause 47 empowers a court to order a person convicted of an offence under sub-clauses 29(1) or 45(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 (sub-section (1))

Sub-clauses (2) to (6) provide a procedure to ensure that amounts of bounty to be refunded under sub-section (1) do not fail to be recovered due to jurisdiction difficulties.

Recovery of repayments

Clause 48 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 claims bounty by way of an advance which is not or does not become payable to him (clause 26) a person has overclaimed for bounty (clause 29), an overpayment is discovered following adjustment to claims made after returns have been lodged (clause 31), or the Comptroller-General discovers an overpayment of bounty (clause 32) (sub-clause 13);
- amounts owing to the Commonwealth by a person in any of the situations described in sub-clause (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 (sub-clause (2)).

## PART V - MISCELLANEOUS

Evidence of bounty scheme

Clause 49 provides that production of the Gazette purporting to contain the bounty notice setting out a particular bounty scheme, may be given in a Court as evidence of a bounty scheme.

Return for Parliament

Clause 50 provides for the furnishing by the Comptroller to the Minister (sub-clause (1)), and the tabling in Parliament by the Minister (sub-clause (2)), of returns in relation to the payment of bounty.

Delegation

Clause 51 provides powers of delegation for the Minister. The Comptroller has a power of delegation for the purposes of this Act by the Customs Administration Act 1985 (Section 14).

Application for review

Clause 52 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 53 requires persons whose interests are affected by an administrative decision of a kind referred to in clause 52 to be notified of the rights of review of those decisions by the Administrative Appeals Tribunal.

Appropriation

Clause 54 provides for payments of bounty and advances on account of bounty to be paid out of money appropriated by the Parliament, unless the bounty scheme provides for the money to be payable out of the Consolidated Revenue Fund which is then to be appropriated accordingly.

Regulations

Clause 55 is the standard power to make regulations.









