

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BOUNTY (FUEL ETHANOL) BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Industry, Technology and Regional
Development, Senator the Hon Peter Cook)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
SENATE TO THE BILL AS INTRODUCED



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BOUNTY (FUEL ETHANOL) BILL 1994

OUTLINE

This Bill proposes payments of bounty on the production of certain fuel ethanol in Australia as part of the Government's lead abatement strategy. The Government, in proposing the bounty, is aiming to assist the development of a competitive, robust and ecologically sustainable fuel ethanol industry.

Ethanol can be used as an extender for petrol and diesel. Its octane enhancing properties may offer some potential benefits towards reduction of lead in petrol as well as increasing the sustainability of the energy sector through the use of a fuel based on a renewable resource. It also has the potential to reduce emissions of greenhouse gases.

The principal elements of the bounty scheme are as follows:

- the bounty is to operate from 1 July 1994 until 30 June 1997;

- the total amount to be paid under the bounty is \$25 million with the annual cap for 1994-95 to be \$6 million, for 1995-96 to be \$8 million, and for 1996-97 to be \$11 million;

- the bounty is to be payable on "new production" in Australia of ethanol from biomass feedstocks sourced from plants grown in Australia, where "new production" will include production from existing producers that exceeds the average level of their production for 1992 and 1993;

- bounty is to be paid at the rate of 18 cents per litre of bountiable fuel ethanol;

- any unused funds from a bounty year will be carried over to the following year;

- bounty is to be payable to the producer of bountiable fuel ethanol provided that the producer is, at the time of production, a registered producer who has been granted an allocation and the production for which bounty is being claimed is within that allocation; and

- during any particular year of the bounty, the payment of bounty is subject to and payable from money appropriated from the Parliament for that purpose.

The proposed bounty scheme varies from most other bounty schemes administered by the Commonwealth in that it combines a process of registration with a process of allocation.

The registration process is similar to most other bounty schemes in that a producer of bountiable product cannot be paid bounty unless they have been registered under the scheme. Under the proposed scheme, however, successful registrants will be granted a certain proportion of the bounty via an allocation process. The allocation is the

maximum amount of production in respect of which each registered producer can claim bounty.

Producers registered for the whole of the three year bounty period will be granted an allocation of 90% of their first year allocation for the second year of the bounty and then 90% of that amount for the third year of the bounty. They, along with new applicants for registration, will be able to compete for the balance of the available bounty in both the second and third years of the bounty. It is considered that this process will provide existing producers with incentive for capital investment and allow new producers to enter the market.

FINANCIAL IMPACT STATEMENT

The measures contained in this Bill are expected to result in outlays of:

\$6 million in 1994-95;
\$8 million in 1995-96; and
\$11 million in 1996-97.

BOUNTY (FUEL ETHANOL) BILL 1994

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title etc.

1. This is a machinery clause which provides for the Act to be cited as the *Bounty (Fuel Ethanol) Act 1994*.

Clause 2 - Commencement

2. This clause provides for the Act to commence on the day on which it receives the Royal Assent.

Clause 3 - Object

3. This clause sets the object or purpose of the Act as providing for bounty on the production of certain fuel ethanol to assist in the development of a competitive, robust and ecologically sustainable fuel ethanol industry.

Clause 4 - General administration of Act

4. This clause provides that the Comptroller-General of Customs has the general administration of this Act other than Part 3 which governs the registration and allocation of bounty. The Minister for Primary Industries and Energy will administer Part 3.

Clause 5 - Definitions

5. Subclause (1) defines a number of words and expressions for the purposes of the Act. In particular, it defines:

"biomass feedstocks" as feedstocks sourced from plants grown in Australia but does not include feedstocks sourced from fossil fuels;

"fuel ethanol" as ethanol produced in Australia for use as a transport fuel in Australia; and

"production allocation" as the allocation to a registered person, under Part 3, of a quantity of quantity of bountiable fuel ethanol in relation to which bounty would be available.

6. Subclause (2) sets out the circumstances under which two persons, two bodies corporate or a person and a body corporate are deemed to be associates of each other for the purposes of this Act.

Clause 6 - Meaning of new production in relation to the production of fuel ethanol

7. Bounty is only to be payable upon **new** production of bountiable fuel ethanol. New production is not to be limited to new producers. For existing producers new production is production in excess of the average 1992 and 1993 production (paragraph 4A(b) refers).

Clause 7 - Meaning of bountiable fuel ethanol

8. This clause provides that to be eligible for bounty, the fuel ethanol must be produced from biomass feedstocks produced in Australia and the volume of fuel ethanol produced must reach or exceed the threshold limit of 350,000 litres for the purposes of administrative efficiency and to ensure quality control of ethanol produced.

Clause 8 - Calculation of production of bountiable fuel ethanol in a year

9. This clause requires that all claims for bounty in a particular bounty year are received by 31 July in the next year. This will enable the precise amount of money actually paid out under the bounty for a particular year to be ascertained and therefore will allow the allocation for the next year to be correctly processed.

Clause 9 - Uniformity

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

PART 2 - BOUNTY

Clause 10 - Specification of bounty

11. This clause outlines the conditions for eligibility for bounty under this scheme. It specifies that bounty is only payable on the production in **Australia** of bountiable fuel ethanol (subclause 10(1)); that the bounty is payable to the **producer** of the bountiable fuel ethanol (subclause 10(2)); and that a producer of bountiable fuel ethanol will not be entitled to bounty unless from the time of production to the time of making the claim for bounty, the producer is a **registered producer** (subclause 10(3)).

Clause 11 - Certain circumstances in which bounty is not payable

12. Consistent with the ANZCERTA agreement with the Government of New Zealand, this provision prohibits bounty assistance for fuel ethanol that would be exported either directly or indirectly to New Zealand. Given the definition of fuel ethanol in subclause 5(1), it should be the case that bountiable fuel ethanol will **always** be used in Australia, however, this provision makes clear Australia's obligations under ANZCERTA.

PART 3 - REGISTRATION AND ALLOCATION

Clause 12 - Applying for registration

13. Clause 12 outlines the extensive registration process required under the proposed scheme.

14. Given the nature of the proposed scheme, applicants may apply for registration for the whole bounty period, for the last two years of the bounty period or for the last year of the bounty period (subclause 12(1) refers).

15. Subclause 12(2) specifies the dates for which applications for registration must be received by the Minister for each of the three classes of registration.

16. Subclause 12(3) specifies that the application must be in an approved form. Subclause 12(4) further specifies that the application must contain certain details. The details in this subclause is considered to be the minimum required to enable the Minister for Primary Industries and Energy to be able to assess the applicants against one another in order to make the decisions on their respective allocations.

17. The information required under subclause 12(4) can be broadly categorised into two groups, production information and information on the environmental effects of the proposed project.

18. Under the broad heading of **production information**, the applicant must include:

- information showing the required level of new production (ie. 350,000 litres) of fuel ethanol (paragraph 12(4)(a));
- information that this new production will be from domestic biomass feedstocks (paragraph 12(4)(a));
- a proposed production plan for each year of the bounty period for which the application relates and for the year after the bounty finishes (paragraph 12(4)(b));
- a description of the project (paragraph 12(4)(c));
- particulars of their relevant financial details (paragraph 12(4)(d));
- information about their ownership and control where the applicant is a body corporate (paragraph 12(4)(e));
- details of current or planned research and development in relation to production, distribution or use of the fuel ethanol (paragraph 12(4)(f));

- details of their strategy for achieving commercial production without the assistance of a bounty after the bounty period has finished (paragraph 12(4)(g)), and
- particulars of their distribution and marketing strategy for the fuel ethanol.

19. Under the broad heading of **environmental information**, the applicant must include:

- their strategy for addressing long and short term environmental considerations relating to the whole of the project (paragraph 12(4)(j)); and
- in relation to the marketing strategy referred to above, particulars of how that strategy will assist in the reduction of emissions of environmental pollutants associated with fuel use (paragraph 12(4)(h)).

20. The Act does not provide the Minister with a power to require further information from applicants.

Clause 13 - Registration applications for years 1, 2 and 3 and consequent production allocation for year 1

21. Clauses 13 to 22 prescribe the allocation process that is to operate in respect of this bounty. The allocation process is intended to create certainty for the entire bounty period for producers who are successful applicants in the first and second years whilst ensuring there is opportunity for new producers to enter the scheme in years 2 and 3 of the bounty.

22. The process begins with the Minister for Primary Industries and Energy determining, in respect of registration applications for the three years of the bounty, who is to be registered and, of the registered applicants, what production allocation to fix for them (subclause 13(1)). This decision must be made before 31 August 1994.

23. The grounds for registering a person and for fixing an amount as their production allocation are whether, having regard to all the applications, criteria specified in clause 22 and any other matter that the Minister considers to be relevant, the Minister considers that they would be able to contribute significantly to the development of a competitive, robust and ecologically sustainable fuel ethanol industry (subclause 13(2)).

24. All applicants must be informed by the Minister as to whether or not they have been registered. For those who have been registered, the Minister must inform them of their production allocation (paragraph 13(3)(b)). For those who have been refused registration, the Minister must specify the reasons why they have been refused (paragraph 13(4)(b)).

25. Where a person has been registered under this clause, the registration is taken to have effect from 1 July 1994, and therefore any production on and from 1 July 1994 by a registered producer can be included in a claim for bounty (subclause 13(5) refers).

Clause 14 - Production allocation for years 2 and 3 for a person registered for years 1, 2 and 3

26. Subclause 14(1) provides that where the Minister has made an allocation to a registered producer for year 1 of the bounty then, provided the registered producer complies with any requirements prescribed under clause 23, their production allocation for year 2 of the bounty will be 90% of their production allocation for year 1, and their production allocation for year 3 of the bounty will be 90% of their production allocation for year 2.

27. Subclause 14(2) provides that where a registered producer produces less than their allocated amount for year 1, then their production allocation for year 2 will be reduced to 90% of their production in year 1. Their production allocation for year 3 is then still 90% of their production allocation for year 2. This is contingent on them remaining registered (ie. complying with any conditions prescribed under clause 23).

28. Subclause 14(3) provides a similar system for year 3 of the bounty. That is, where a registered producer produces less than their allocated amount for year 2, then their production allocation for year 3 will be reduced to 90% of their production in year 2. Again, this is contingent on them remaining registered (ie. complying with any conditions prescribed under clause 23).

Clause 15 - Additional production allocations for year 2

29. This clause permits persons registered for the three years of the bounty to apply in year 2 for an additional production allocation for the bounty. Under clause 14, they will have been allocated an amount which will be 90% of their production allocation for year 1 or, if they produced less than this and have remained registered, 90% of their production for year 1. Notwithstanding their production allocation under clause 14, it is proposed to enable them to compete with other producers registered for the three years of the bounty and with new producers wanting to enter the bounty scheme in its second year, for the remaining amount of money dedicated to the scheme for year 2.

30. Subclause 15(1) provides that a person registered for the three years of the bounty may apply to the Minister for Primary Industries and Energy for an additional production allocation for year 2 of the bounty. Given that the applicant will need to have all their production details for year 1, the application for the additional production allocation must be received by the Minister before 31 July 1995 (subclause 15(2)) and it must be on an approved form (subclause 15(3)). The Minister then has until 31 August 1995 to determine whether the applicant should be granted an additional production allocation.

31. The additional production allocation for year 2 is open to all persons registered for the three years of the bounty. As outlined earlier, they will need to compete with

all other applicants for additional production allocation as well as all persons seeking registration under clause 17. Therefore, the Minister, in determining whether to grant an additional allocation must have regard to:

- all applications made by persons registered for the three years of the bounty;
- all applications for registration for years 2 and 3 of the bounty;
- all applications for additional allocation for year 2 of the bounty;
- the criteria in clause 22; and
- any other matter the Minister thinks is relevant.

32. Having regard to these matters, the Minister must not grant an additional production allocation unless the Minister is satisfied that the capacity of the person to contribute significantly to the development of a competitive, robust and ecologically sustainable fuel ethanol industry is enhanced (subclause 15(5)).

33. All applicants for additional production allocation for year 2 must be informed by the Minister as to whether or not they have been successful. For those who are successful, the Minister must inform them of their additional production allocation (subclause 15(6)). For those who have been refused an additional production allocation, the Minister must specify the reasons why they have been refused (subclause 15(7)). Once the additional production allocation has been determined, it is taken to have operated with effect from 1 July 1995.

Clause 16 - Working out a person's production allocation for year 2 when the person is granted an additional allocation for year 2

34. This clause provides that where a person has been granted an additional production allocation for year 2, then their total production allocation for year 2 is 90% of their production allocation for year 1 (subclause 16(1)) or 90% of the person's production for year 1 if they produced less than their production allocation for year 1 (subclause 16(2)), plus the additional production allocation.

Clause 17 - Registration applications for years 2 and 3 and consequent production allocation for year 2

35. This clause provides the mechanism by which the Minister for Primary Industries and Energy registers persons for years 2 and 3 of the bounty. Similar to clause 13, the Minister must decide whether to register new applicants and if the Minister decides to register them, the Minister must fix a production allocation for year 2 (subclause 17(1)).

36. As specified in clause 12, the application must be in an approved form and contain the detail outlined in subclause 12(4). Similar to clause 13, the grounds for

registering a person and for fixing an amount as their production allocation are whether, having regard to:

- all the applications for persons already registered under the scheme (ie. registered under clause 13 for years 1, 2 and 3 of the bounty);
- all the applications for persons seeking registration for years 2 and 3 of the bounty;
- all the applications for persons seeking additional allocation for year 2 of the bounty;
- criteria specified in clause 22; and
- any other matter that the Minister considers to be relevant,

the Minister considers that they would be able to contribute significantly to the development of a competitive, robust and ecologically sustainable fuel ethanol industry (subclause 17(2)).

37. As with applications for registration for the entire bounty period, all applicants for registration for years 2 and 3 of the bounty must be informed by the Minister as to whether or not they have been registered. For those who become registered, the Minister must inform them of their production allocation (subclause 17(3)). For those who are refused registration, the Minister must specify the reasons why they have been refused (subclause 17(4)).

38. Where a person has been registered under this clause, the registration is taken to have effect from 1 July 1995, and therefore any production on and from 1 July 1995 by a registered producer can be included in a claim for bounty (subclause 17(5) refers).

Clause 18 - Production allocation for year 3 for a person registered for years 2 and 3

39. This clause provides for the production allocation for year 3 for persons registered under clause 17. It is expressed in similar terms to clause 14.

40. Subclause 18(1) provides that where the Minister has made an allocation to a registered producer for years 2 and 3 of the bounty then, provided the registered producer complies with any requirements prescribed under section 23, their production allocation for year 3 of the bounty will be 90% of their allocation for year 2.

41. Subclause 18(2) provides that where a registered producer produces less than their allocated amount for year 2, then their allocation for year 3 will be reduced to 90% of their production in year 2. This is contingent, of course, on them remaining registered (ie. complying with any conditions prescribed under clause 23).

Clause 19 - Additional production allocation for year 3

42. This clause permits persons registered for years 2 and 3 of the bounty to apply in year 3 for an additional production allocation of the bounty. Under clause 18, they will have been allocated an amount which will be 90% of their production allocation for year 2 or, if they produced less than this and have remained registered, 90% of their production for year 2. Notwithstanding their allocation under clause 18, it is intended to enable them to compete with other producers registered for years 1, 2 and 3, years 2 and 3, and with new producers wanting to enter the bounty scheme in its third year, for the remaining amount of money dedicated to the scheme for year 3.

43. Subclause 19(1) provides that a person registered for the three years of the bounty or for years 2 and 3 of the bounty may apply to the Minister for Primary Industries and Energy for an additional production allocation for year 3 of the bounty. Given that the applicant will need to have all their production details for year 2, the application for the additional production allocation must be received by the Minister before 31 July 1996 (subclause 19(2)) and must be on an approved form (subclause 19(3)). The Minister then has until 31 August 1996 to determine whether the applicant should be granted an additional allocation.

44. The additional production allocation for year 3 is open to all persons registered for the three years of the bounty and to all persons registered for years 2 and 3 of the bounty. As outlined earlier, they will need to compete with all other applicants for additional production allocation as well as all persons seeking registration under clause 21. Therefore, the Minister, in determining whether to grant an additional production allocation must have regard to:

- all applications made by persons registered for the three years of the bounty;
- all applications made by persons registered for years 2 and 3 of the bounty;
- all applications by persons seeking registration for year 3 of the bounty;
- all applications by persons granted an additional allocation for year 2 of the bounty;
- all applications for additional allocation for year 3 of the bounty;
- the criteria in clause 22; and
- any other matter the Minister thinks is relevant.

45. Having regard to these matters, the Minister must not grant an additional allocation unless the Minister is satisfied that the capacity of the person to contribute significantly to the development of a competitive, robust and ecologically sustainable fuel ethanol industry is enhanced (subclause 19(5)).

46. All applicants for additional allocation for year 3 must be informed by the Minister as to whether or not they have been successful. For those who are successful, the Minister must inform them of their additional production allocation (subclause 19(6)). For those who have been refused an additional production allocation, the Minister must specify the reasons why they have been refused (subclause 19(7)). Once the additional production allocation has been determined, it is taken to have operated with effect from 1 July 1996.

Clause 20 - Working out a person's production allocation for year 3 when the person is granted an additional production allocation for year 3

47. This clause provides that where a person has been granted an additional production allocation for year 3, then their total production allocation for year 3 is 90% of their production allocation for year 2 (subclause 20(1)) or 90% of the person's production for year 2 if they produced less than their production allocation for year 2 (subclause 20(2)) plus the additional production allocation.

Clause 21 - Registration applications for year 3 and consequent production allocations for year 3

48. This clause provides the mechanism by which the Minister for Primary Industries and Energy registers persons for year 3 of the bounty. Similar to clauses 13 and 17, the Minister must decide whether to register new applicants and if the Minister decides to register them, the Minister must fix a production allocation for year 3 (subclause 21(1)).

49. As specified in clause 12, the application must be in an approved form and contain the detail outlined in subclause 12(4). Similar to clauses 13 and 17, the grounds for registering a person and for fixing an amount as their production allocation are whether, having regard to:

- all the applications for persons already registered under the scheme (ie. registered under clause 13 for years 1, 2 and 3 of the bounty and registered under clause 17 for years 2 and 3 of the bounty);
- all the applications for persons seeking registration for year 3 of the bounty;
- all the applications for persons seeking additional allocation for year 3 of the bounty;
- criteria specified in clause 22; and
- any other matter that the Minister considers to be relevant,

the Minister considers that they would be able to contribute significantly to the development of a competitive, robust and ecologically sustainable fuel ethanol industry (subclause 21(2)).

50. As with applications for registration for the entire bounty period, all applicants for registration for year 3 of the bounty must be informed by the Minister as to whether or not they have been registered. For those who are registered, the Minister must inform them of their production allocation (subclause 21(3)). For those who are refused registration, the Minister must specify the reasons why they have been refused (subclause 21(4)).

51. Where a person has been registered under this clause, the registration is taken to have effect from 1 July 1996, and therefore any production on and from 1 July 1996 can be included in a claim for bounty (subclause 21(5) refers).

Clause 22 - Criteria for the purposes of applications under sections 13, 15, 17, 19 and 21

52. This clause outlines the criteria that the Minister for Primary Industries and Energy must have regard to in determining whether an applicant should be registered or granted an additional production allocation at any stage under the proposed scheme. To a significant extent, the criteria reflect the information given by persons in their applications. Similar to the details that must be contained in the applications as set out in subclause 12(4), the criteria can be categorised into two broad groups: production information and environmental information.

53. Paragraphs 22(a), (b), (c) (d) and (g) all relate to **production criteria**. Paragraphs 22(e) and (f) relate to **environmental criteria**. In particular, paragraph 22(e) relates to the feasibility of the applicant's strategy to reduce greenhouse gas emissions relating to the complete process of the fuel ethanol, from sourcing the feedstock right through to the distribution and use of the fuel ethanol. This will ensure that recipients under the proposed scheme have addressed the relevant environmental issues for the whole cycle of their operations.

Clause 23 - Prescribed conditions applying to a registered person

54. This clause provides a head of power for regulations prescribing conditions that must be complied with by a person registered under the proposed scheme. In particular, it is envisaged that a certain level of production will be prescribed for registered producers. If the producer does not meet this level (which would probably be expressed in terms of a certain percentage of their allocation) then the producer may be subject to cancellation of their registration under clause 24.

Clause 24 - Cancellation of registration

55. This clause empowers the Minister for Primary Industries and Energy to cancel a person's registration under the Act if the Minister becomes satisfied that the person has not complied with a prescribed condition or if they have been convicted of an offence against the Act. It is considered that this power is necessary to ensure that certain production targets are met. Subclause 24(2) provides that where the Minister cancels a person's registration, the Minister must give the person written notice of the cancellation together with reasons for cancelling the registration.

56. A decision of the Minister to cancel a person's registration is reviewable by the Administrative Appeals Tribunal (paragraph 61(1)(a) refers).

PART 4 - PAYMENT OF BOUNTY

Clause 25 - Amount of bounty that a registered person may claim

57. This clause provides that a registered person is entitled to be paid an amount of bounty in respect of bountiable fuel produced in a bounty year that does not exceed the bounty that would be payable in respect of the person's production allocation for that year.

Clause 26 - Claims for payment of bounty

58. This clause sets out the procedures to be followed in claiming bounty.

59. A registered person is required to (subclause 26(2)):

- lodge a claim on an approved form (defined in clause 5(1) as a form approved by the Comptroller in writing) providing such information as is required by the form;
- sign and witness the form as is required by clause 33; and
- lodged with a Collector for a State or Territory, or with the Comptroller, at any time after the production of fuel ethanol is complete.

60. Subclause 26(3) places restrictions on making claims for payment of bounty in a particular bounty year and provides that:

- a registered person may only make one claim each month, starting on the day the person becomes entitled to claim such bounty; and
- may not claim bounty in respect of fuel ethanol produced in a particular bounty year after 31 July next following the end of that year.

61. The Comptroller is then obliged to examine the claim (subclause 26(4) and either:

- approve, in writing, the payment of the amount including where the amount is different from the amount for which the claim was made, with the difference being less than \$200, and the Comptroller is satisfied the difference is not attributable to the person deliberately overclaiming or underclaiming the amount of bounty (subclause 26(5)); or

- refuse, in writing, to approve the payment (subclause 26(6));
- decisions of the Comptroller to refuse the payment of bounty are reviewable by the Administrative Appeals Tribunal (paragraph 61(1)(b)).

62. Where the Comptroller approves payment of an amount that is less than the amount claimed or refuses to approve payment, written notice must be given to the claimant setting out the decision and reasons for the decision (subclause 26(7)).

Clause 27 - Rate of bounty

63. This clause specifies the rate of bounty payable in respect of the production of bountiable fuel ethanol in a bounty year as being 18 cents per litre.

Clause 28 - Amount of bounty proposed to be available during bounty period

64. This clause specifies the total amount that Parliament intends to be available for the payment of bounty in each bounty year. The amounts are (subclause 28(1)):

- in year 1 - \$6 million;
- in year 2 - \$8 million; and
- in year 3 - \$11 million.

65. If an amount specified as being available for the payment of bounty in year 1 or year 2 is not all paid out in that year, Parliament intends that the amount specified in respect of the year following that year be increased by the amount not so paid out (subclause 28(2)).

Clause 29 - Availability of money for payment of bounty

66. This clause provides that where the Comptroller thinks that the amount available in a bounty year for the payment of bounty will be insufficient to meet valid claims in that year, the Comptroller may make payments in such order as the Comptroller thinks appropriate in accordance with procedures set out in the regulations (subclause 29(1)).

67. This will be the result where the Parliament fails to appropriate the total amounts specified in subclause 28(1).

68. Where money is not appropriated by the Parliament in a bounty year for the purposes of making payments of bounty, a person is not entitled to be paid bounty in respect of that bounty year (subclause 29(2)).

Clause 30 - Variation of excessive claim

69. This clause provides that where a person who has made a claim for bounty becomes aware that the claim is or was, because of inadvertent error, for an amount of bounty that exceeds the person's entitlement by more than \$200, the person must acknowledge the excess within 21 days (subclauses 30(1) and (2)). Failure to acknowledge may result in a penalty of 30 units.

- the procedure for lodgement of an acknowledgement form is similar to the clause governing original claims (see subclause 26(2)).
- where the acknowledgement relates to a claim that has not been dealt with under subsection 26(3), the claim must be dealt with under that subsection as if the claim had been amended in accordance with the acknowledgement (subclause 30(4)).

70. Upon examination of the acknowledgement, where the Comptroller is satisfied there has been an overpayment of bounty by more than \$200, the Comptroller must serve on the claimant a demand for the repayment of the amount of the overpayment (subclause 30(6)).

71. A decision of the Comptroller for the above purposes is reviewable by the Administrative Appeals Tribunal (subparagraph 61(1)(c)).

Clause 31 - Other adjustment of claims

72. This clause provides that the Comptroller shall serve a demand for repayment of an overpayment of a claim for bounty in excess of \$200 where the Comptroller discovers such an overpayment in a situation other than an acknowledgement under clause 30.

- The above decision is reviewable by the Administrative Appeals Tribunal (subparagraph 61(1)(d)).

73. Where the amount of the overpayment referred to in subclause 31(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 of the person to comply with the Act or regulations and the repayment of the overpayment would be unreasonable or would cause the person undue hardship; or
- the cost of trying to recover the overpayment is so high and the amount likely to be recovered as a result of trying to recover the overpayment is so low that taking action to recover the overpayment would not be justified;

the Comptroller does not have to serve a demand for repayment for the amount of the overpayment (subclauses 31(2) and (3)).

74. Where the Comptroller does not serve a demand for repayment of the amount of an overpayment, particulars of the relevant amount shall be included in the return given to the Minister under clause 60 for the financial year in which the Comptroller so refrained (subclause 31(4)).

Clause 32 - Adjustment of production allocations in certain cases where action taken under section 30 or 31

75. This clause provides that;

- where a variation of a claim for payment of bounty is made under clause 30 or 31 after 31 July next following the year in which fuel ethanol is produced; and
- the variation was necessary because the amount of fuel ethanol produced in the year was overstated in the claim; and
- had the amount of fuel ethanol been correctly stated in the claim, the total production of fuel ethanol in the year would have been less than the person's production allocation for the year

the person's production allocation for any subsequent bounty year is the amount that it would have been if the statement of fuel ethanol production in the claim had been correct.

Clause 33 - Forms

76. This clause prescribes the conditions for the signing of a claim or acknowledgement lodged by a person, being either an individual or a body corporate, in accordance with an approved form. Authorised persons are permitted to lodge claims or acknowledgement on behalf of claimants which is intended to assist claimants and expedite the processing of claims by the Australian Customs Service.

PART 5 - ADMINISTRATION

Division 1 - General administrative provisions

Clause 34 - Accounts

77. This clause makes eligibility for bounty conditional upon the maintenance of appropriate commercial records relating to the production of the bountiable fuel ethanol (paragraph 34(1)(a)) and that the records are kept for three years after a claim for bounty has been made in respect of that fuel ethanol (paragraph 34(1)(b)).

78. This clause specifies that such records must be kept in the English language or in such form which is readily accessible and readily convertible into writing in the English language (subclause 34(2)) to cover the situation where records are kept on some electronic medium.

Clause 35 - Securities

79. This clause provides the Comptroller with the power to require a person to whom bounty could become payable to give security for compliance with the Act or regulations made under the Act. Payment of bounty may be withheld until the required security is given (subclause 35(3)). A decision of the Comptroller to require a security under this provision is reviewable by the Administrative Appeals Tribunal (paragraph 61(1)(e)).

Division 2 - Enforcement provisions

80. This Division sets out the various powers available to Customs officers to ensure bounty paid to registered persons or to persons claiming they are registered persons is correctly paid. It also sets out the requirements for the issue of inspection warrants and the powers which may be conferred by such warrants. This Division attempts to balance the rights of privacy of individuals and companies with the Government's obligations to ensure that money appropriated by the Parliament is spent in such a manner that fulfils the purpose of the Act.

Clause 36 - Inspection powers

81. This clause defines "inspection power" for the purposes of Division 2 of the Act. The definition covers the power to inspect any bountiable fuel ethanol, activities relating to the bountiable fuel ethanol, accounts and documents relating to an activity in respect of the bountiable fuel ethanol's production and to take extracts from or copies of such accounts or documents.

Clause 37 - Appointment of authorised officers

82. This provision empowers the Comptroller to appoint officers of the Australian Customs Service as authorised officers upon whom certain functions may be conferred for the purposes of this Act and, in particular, in relation to functions under this Division.

Clause 38 - Identity cards

83. This provision ensures that all authorised officers for the purposes of this Act will be issued with an identity card in order to facilitate their identification and to enable verification of their entitlement to exercise powers of an authorised officer under this Act.

Clause 39 - Entry on premises occupied by registered person

84. Subclause 39(1) empowers an authorised officer to enter premises occupied by a registered person (other than residential premises), at any reasonable time to exercise inspection powers as defined in clause 36.

85. If the occupier of such premises fails to provide the authorised officer with all reasonable facilities and assistance for the effective exercise of the inspection powers, subclause 39(2) provides that the occupier is liable for a penalty of up to 30 penalty units. Subclause 39(3) is a control on an authorised officer's inspection powers as it provides that the authorised officer may not exercise inspection powers where the occupier of the premises has asked to see proof of identity and the authorised officer fails to produce his or her identity card (see clause 38).

Clause 40 - Entry on other premises

86. Subclause 40(1) identifies two circumstances where an authorised officer may enter premises other than premises occupied by a registered person and exercise inspection powers. The circumstances are where the officer has the consent of the occupier of the premises, or where the officer has obtained an inspection warrant under clause 41 in respect of those premises.

87. Similar to subclause 39(3), subclause 40(2) provides that the authorised officer may not exercise inspection powers where the occupier of the premises has asked to see proof of identity and the authorised officer fails to produce his or her identity card.

Clause 41 - Entry on other premises under an inspection warrant

88. Subclause 41(1) outlines three circumstances where an authorised officer may apply to a magistrate for a warrant to allow the authorised officer to enter premises other than premises occupied by a registered person and to exercise inspection powers as defined in clause 36. The three circumstances are where the authorised officer has reasonable grounds for believing that the premises are premises where:

- bountiable fuel ethanol has been, is being, or is intended to be, produced;
- an activity in relation to the production of bountiable fuel ethanol is taking place or is intended to take place; or
- there are kept any accounts or other documents relating to an activity in respect of the production of bountiable fuel ethanol.

89. Subclause 41(2) provides that if a magistrate is satisfied by information on oath or affirmation that there are reasonable grounds for believing that certain premises are any of the three categories outlined above and that the premises are not ones where the occupier or owner is a registered person and that they are not premises where the occupier or owner has given permission for the authorised officer to enter and exercise inspection powers, then the magistrate must issue an inspection warrant.

90. This obligation upon the magistrate is qualified by subclause 41(3) which precludes the magistrate from issuing a warrant where he or she requires further information about the grounds for seeking the warrant and the authorised officer does not provide the magistrate with that information.

91. Subclause 41(4) identifies the particulars that an inspection warrant must contain. One of the particulars is that the warrant must specify the time for which it remains in force and that this period of time must not exceed 7 days. This limitation, however, does not preclude the issue of successive warrants in relation to the same premises (subclause 41(5)).

92. Clauses 42, 43, 44, 45, 46, 47, 48 and 49 are all equivalent to provisions contained in the Crimes (Search Warrants and Powers of Arrest) Amendment Bill 1994 (the SWAPA Bill). The provisions reflect the Commonwealth's criminal law policy with respect to search and inspection warrants.

Clause 42 - Availability of assistance and use of force in executing a warrant

93. This clause is similar to proposed section 3G of the SWAPA Bill. The clause restates the common law position that, in executing a warrant, the authorised officer may obtain such assistance and use such force as is necessary and reasonable in the circumstances. It should be noted that in the case of persons, only officers of Customs or officers of police may use the necessary and reasonable force.

Clause 43 - Specific powers available to authorised officers executing warrants

94. This clause is similar to proposed section 3J of the SWAPA Bill. Subclause 43(1) allows for an interruption of one hour (or a longer period if the occupier of the premises consents in writing) in the execution of the warrant. This interruption is considered appropriate in cases where, for example, the services of a locksmith would need to be obtained. Subclause 43(2) provides that where the execution of a warrant is stopped by a court order, but the court order is then revoked or reversed on an appeal, the warrant is still operative and its execution may be completed.

Clause 44 - Announcement before entry

95. This clause is similar to proposed section 3ZP of the SWAPA Bill. It is based on the recommendations of Judge Staunton following the Brennan inquiry and the inquiry into the Gundy case by the Royal Commission into Aboriginal Deaths in Custody. It provides that before any premises can be entered under an inspection warrant, the authorised officer or a person assisting the authorised officer must announce the intention to enter and give any person on the premises an opportunity to allow such entry.

Clause 45 - Details of warrant to be given to occupier etc

96. This clause is similar to proposed section 3H of the SWAPA Bill. It provides that where an inspection warrant is being executed, the occupier of the premises is entitled to a copy of the warrant (subclause 45(1)). The copy of the warrant need not include the signature of the magistrate. This limitation is designed to prevent forgery by ensuring that the occupier of the premises is not placed in a situation where they have a copy of a signed warrant.

Clause 46 - Use of equipment to exercise inspection powers

97. This clause is similar to proposed section 3K of the SWAPA Bill. Subclause 46(1) provides that an authorised officer or a person assisting an authorised officer may take equipment to premises for the purposes of exercising inspection powers at those premises (eg. portable photocopiers). Subclause 46(2) provides that equipment already at the premises can be used provided the authorised officer or person assisting believe on reasonable grounds that they can use the equipment without damaging it.

Clause 47 - Use of electronic equipment at premises

98. This clause is similar to proposed section 3L of the SWAPA Bill. Subclause 47(1) provides that, along the lines of subclause 46(2), an authorised officer or a person assisting may use electronic equipment already at premises that are to be inspected provided there is the belief on reasonable grounds that the equipment can be used without damage. Subclause 47(2) allows an authorised officer or a person assisting to lock up or secure equipment if there is a belief on reasonable grounds that the equipment can access accounts and other documents relating to an activity in respect of the production of bountiable fuel ethanol, but expert assistance is necessary and that the desired material may be tampered with or destroyed if the equipment is not secured.

99. Subclause 47(3) requires the giving of notice to the occupier where equipment is to be secured, and subclause 47(4) provides a limit of 24 hours for securing the equipment.

100. The 24 hour limit can be extended by a magistrate upon application by the authorised officer or the person assisting where there are reasonable grounds for believing that the required expert assistance will not be available in the 24 hour period (subclause 47(5)). Where an extension is to be applied for, the occupier must have notice of the application and they are entitled to be heard in relation to the application (subclause 47B(6)). Subclause 47(7) provides that the application for an extension must be made in the same manner as the application for an inspection warrant.

Clause 48 - Compensation for damage to equipment

101. This clause is similar to proposed section 3M of the SWAPA Bill. It provides that where equipment has been used in accordance with clauses 46 or 47 and the equipment has been damaged because of insufficient care in either using the equipment or selecting the person to use the equipment, then compensation is payable to the

owner of the equipment. The compensation is to be payable out of money appropriated by the Parliament for the purpose and not from the normal budget of the Australian Customs Service. In determining the amount of damages payable, it will be relevant if the occupier and employees of the occupier, if available, had provided any guidance or warning as to the operation of the equipment.

102. The purpose of this, as outlined in the Explanatory Memorandum to the SWAPA Bill, is to minimise compensation in cases where there has been a deliberate programming of software to destroy or cause damage if not accessed in a particular manner.

Clause 49 - Offence of making false statements in applications to warrants

103. This clause is similar to proposed section 3ZQ of the SWAPA Bill. It creates an offence punishable by 2 years imprisonment for an authorised officer knowingly making a false or misleading statement in the application for a warrant.

Clause 50 - Powers to require persons to answer questions and produce documents

104. This clause empowers an authorised officer to require certain persons to attend before him or her to answer questions and produce documents in relation to the production of bountiable fuel ethanol. This provision only applies where the authorised officer believes on reasonable grounds that the person is capable of giving information relevant to activities in respect of the production of bountiable fuel ethanol (subclause 50(1) refers).

105. The authorised officer must give notice in writing of the requirement to provide information, produce documents or answer questions (subclause 50(2) refers) and that notice must set out the effect of clause 51 (subclause 50(3) refers).

Clause 51 - Production of accounts or other documents that are false or misleading in a material particular

106. This clause creates an offence for not disclosing that accounts or other documents prepared by one person and produced by another in pursuance of a notice under clause 50 are false or misleading, where the latter person knows them to be false or misleading. The penalty for breach of this provision is imprisonment for 6 months (subclause 51(2) refers).

Clause 52 - Self-incrimination etc. not ground for refusing to answer a question etc.

107. This clause provides that a person is not excused from answering a question or producing accounts or documents when required to do so under clause 50 on the ground that to do so might incriminate the person (subclause 52(1) refers).

108. Subclause 52(2) prevents the use of such incriminating evidence in any criminal proceedings against the person other than proceedings arising out of clause 51.

(knowingly producing false or misleading documents prepared by another person) or paragraph 55(3)(a) (refusal or failure to attend before an authorised officer).

Clause 53 - Failure to attend or answer a question when require to do so

109. This clause provides that when a registered person or a director, servant or agent of a registered person fails to attend, answer a question or produce an account or document, bounty is not payable to that registered person until that person has attended, answered the question or produced the account or document.

Clause 54 - Power to examine on oath etc.

110. This clause provides for an authorised officer to examine on oath or affirmation persons attending before him or her in accordance with a requirement under clause 50.

Clause 55 - Offences

111. Subclause 55(1) creates offences for refusing or failing, without reasonable excuse, to attend before a 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.

- Penalty - imprisonment for 6 months.

112. Subclause 55(2) creates an offence for obtaining or attempting to obtain bounty that is not payable.

- Penalty - imprisonment for 5 years.

113. Subclause 55(3) makes it an offence to intentionally or recklessly make statements, orally or in writing, that are false or misleading in a material particular, or presenting an account or other document that is false or misleading in a material particular.

- Penalty - imprisonment for 6 months.

114. Subclause 55(4) is a double jeopardy provision which provides that a person cannot be convicted of offences against both subclause 55(2) (intentionally obtaining or attempting to obtain bounty that is not payable) and subclause 30(2) (duty to acknowledge an excessive claim) when the offences are in respect of the same claim for bounty.

115. Subclause 55(4) also provides that a person cannot be convicted of offences against both subclause 55(2) (intentionally obtaining or attempting to obtain bounty that is not payable) and subclause 55(3) (intentionally or recklessly making a statement or producing information that is false or misleading in a material particular) when the offences are in respect of the same claim for bounty.

Clause 56 - Conduct by directors, servants or agents

116. Where, in proceedings for an offence against subclause 55(2) or (3) in respect of conduct engaged in by a body corporate, it is necessary to establish a state of mind on the part of a corporation, it is sufficient to show that the conduct was engaged in by a director, servant or agent acting within the scope of his or her actual or apparent authority and that director, servant or agent had that state of mind (subclause 56(1)) Any conduct so engaged in by the director, servant or agent is deemed to have also have been engaged in by the body corporate (subclause 56(2)) refers.

Clause 57 - Time for prosecutions

117. This clause provides that proceedings for offences against this Act may commence within 3 years of the alleged commission of the offence.

Clause 58 - Recovery of bounty on conviction

118. Subclause 58(1) empowers a court to order a person convicted of an offence under subclause 30(2) or 55(2) or 55(3) to refund to the Commonwealth the amount of bounty wrongfully obtained, in addition to imposing the penalty prescribed in those subclauses.

119. Subclauses 58(2) to (6) provide a procedure to ensure that amounts of bounty to be refunded under subclause 59(1) do not fail to be recovered due to jurisdictional difficulties.

Clause 59 - Recovery of repayments

120. This clause allows the Commonwealth to recover amounts owing to it (by an action in a court for a debt due) in situations where a person has overclaimed for bounty (subclause 30(6)) or the Comptroller discovers an overpayment of bounty (subclause 31(1)).

121. Subclause 59(3) is an offset provision that allows amounts owing to the Commonwealth by a person in those situations to be deducted from any amount that is payable to a 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.

PART 6 - MISCELLANEOUS

Clause 60 - Return for Parliament

122. This clause provides for the furnishing by the Comptroller to the Minister (subclause 60(1)) and the tabling in Parliament by the Minister (subclause 60(2)) of annual returns in relation to the payment of bounty under this Act during that particular year.

Clause 61 - Application for review

123. This Provision provides a right to apply to the Administrative Appeals Tribunal for review of:

- a decision of the Minister for Primary Industries and Energy under subclause 24(2) to cancel the registration of a registered person;
- a decision of the Comptroller under subclause 26(6) refusing to approve payment of bounty;
- a decision of the Comptroller to demand repayment of an amount under subclause 30(6);
- a decision of the Comptroller under subclause 31(1) in relation to overpayment of bounty; or
- a requirement by the Comptroller under clause 35 that a person give a security for compliance with the provisions of this Act.

Clause 62 - Appropriation

124. This clause provides for payments of bounty to be paid out of money appropriated by the Parliament for the purpose.

Clause 63 - Regulations

125. This clause permits the making of regulations where required by the Act, or where it is necessary or convenient to do so for carrying out or giving effect to the Act. In particular, it limits any penalties which might be provided for in the Regulations to a maximum of 10 penalty units.

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