

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BOUNTY (PHOTOGRAPHIC FILM) BILL 1989

EXPLANATORY MEMORANDUM

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

BOUNTY (PHOTOGRAPHIC FILM) BILL) 1989

OUTLINE

This Bill proposes new legislation to provide bounty assistance for the production of photographic colour film which has been sensitized and finished in Australia.

The Bill follows the Government's decision announced on 31 October 1989 to introduce a production bounty for such film totalling up to \$12 million a year for 3 years commencing on 1 January 1990, as part of the support package for this industry and its major producer in Australia, Kodak Australasia.

The principal elements of the bounty scheme are as follows:

- . the bounty is to be payable on the production in Australia of "bountiable photographic film" which has been "sensitized" and "finished" in Australia (Clause 4, concerning the definitions of the terms, and Clause 7);
- . bounty is payable at a rate of \$3.75 for each square metre of bountiable photographic film produced (Clause 10) provided the film is produced in rolls of at least 200 metres by 1 metre (definitions of "finishing operations" and "sensitizing operations" in Clause 4);
- . the bounty will be available to those producers of bountiable photographic film who are registered for the entire 5-year bounty period, from 1 January 1990 to 31 December 1994 (Clause 7 and Clause 4, definition of "period to which this Act applies");
- . the bounty is payable at the end of the 5-year period, although the Bill provides for the payment of advances on account of bounty based on actual production of photographic film during the bounty period (Clause 11);
 - .. any advances received by a producer may be reclaimed where a producer fails to comply with all the bounty eligibility conditions throughout the entire bounty period (subclause 11(3)); and
- . during any particular year the availability of advances or bounty is subject to, and payable from, money appropriated by the Parliament for that purpose (subclause 12(2) and Clause 31).

Financial Impact Statement

The amount of money available for the payment of bounty, or advances on account of bounty under this scheme, is limited to that amount which is appropriated by the Parliament for that purpose (subclause 12(2) and Clause 31).

In announcing the bounty scheme on 31 October 1989, the Government indicated that only the first 3 years of the bounty scheme would receive an appropriation totalling up to \$36 million (at an annual limit of up to \$12 million).

The financial impact of this Bill by financial years is therefore:

- \$6 million for 1989-90;
- \$12 million for 1990-91;
- \$12 million for 1991-92; and
- \$6 million for 1992-93.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Short title

Clause 1 provides for the Act to be cited as the Bounty (Photographic Film) Act 1989.

Commencement

Clause 2 provides for the Act to commence on 1 January 1990, the date announced by the Government in its press statement of 31 October 1989.

General administration of Act

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

Interpretation

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

In particular, the subclause defines:

"bountiable photographic film" as silver halide sensitized colour film that, if it were imported into Australia, would be film to which heading 3702 of Schedule 3 to the Customs Tariff Act 1987 would apply;

"finishing operations" as the slitting of sensitized rolls of colour photographic film, of a width exceeding one metre and a length exceeding 200 metres into 35 millimetre widths, and the subsequent perforating and spooling into 35 millimetre cassettes of the resulting film strips;

"period to which this Act applies" as the period from 1 January 1990 to 31 December 1994;

- . this period is especially important in designating the period within which a registered producer must fulfil obligations under the Act (see in particular subclause 7(3);

"sensitizing operations" as the preparation and coating onto rolls of film base, of a width exceeding one metre and a length exceeding 200 metres, of multi-layered light sensitive colour photographic emulsions;

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

Subclause (3) provides that where Customs Tariff items cited in this Act are changed owing to amendments to the Customs Tariff Act 1987, introduced by the mechanism of a Customs Tariff proposal, the Tariff items contained in this Act will be deemed to have been amended at the same time as the proposal takes effect;

Effect of amendments of Tariff Act

- Clause 5 protects a producer who has already commenced production of bountiable photographic film at the time of the making of an amendment to the Tariff Act which has retrospective effect, and which would have the result that bountiable film would no longer fall within the Tariff definition. This clause affords protection to such a producer to the extent of the period of retrospectivity concerned.

Uniformity

- Clause 6 is a standard provision in bounty legislation to expressly prohibit the exercise of any power under the Act in a manner which would result in bounty not being uniform throughout the Commonwealth, in accordance with the Constitutional requirement to that effect.

PART 2 - BOUNTY

Specification of Bounty

Clause 7 Prescribes the eligibility conditions that govern whether bounty may be paid under this bounty scheme.

subclause (1) provides that bounty is payable on the production, in Australia, of bountiable photographic film.

subclause (2) provides that bounty is payable to the producer of the bountiable photographic film;

subclause (3) provides that a producer of bountiable photographic film will not be eligible to claim bounty unless:

- . the sensitizing and finishing operations in respect of the film are all carried out in Australia;
- . the finishing operations in respect of the film are completed during the period from 1 January 1990 to 31 December 1992.
- .. Clause 9 requires that all claims in respect of finished film be lodged before 1 April 1993.
- . the producer of the film remains, at all times during the period to which the Act applies, a registered producer under the Act;
- . "period to which the Act applies" is defined in subclause 4(1) as being the period between 1 January 1990 and 31 December 1994
- . therefore, should a producer who is registered under this Scheme lose that registration because the producer cannot continue to satisfy the registration criteria specified in Clause 16 and supporting regulations, the producer will be ineligible to receive any bounty for film produced during the period to which the Act applies;
- . this provision is intended to ensure that if a producer does not maintain registration for the entire bounty period, then any money paid in respect of advances on account of bounty during the entire bounty period is repayable in

full (see subclause 11(3)).

Certain Circumstances in which bounty is not payable

Clause 8 prescribes certain circumstances where bounty is not payable.

subclause (1) prohibits the payment of bounty for bountiable film that is to be directly or indirectly exported to New Zealand on or after 1 July 1990.

- The Government has signed the ANZCERTA trade agreement with the Government of New Zealand which, amongst other things, prohibits bounty assistance on goods produced in either country and exported to the other country. This provision gives effect to that treaty commitment;

PART 3 - PAYMENT OF BOUNTY

Claims for payment of bounty

Clause 9 sets out the procedures to be followed in claiming bounty:

- . a claimant is required to (subclause (2)):
 - lodge a claim on an approved form (defined in subclause 4(1) as a form approved by the Comptroller in writing) providing such information as is required by the form;
 - sign and witness the form as required, by Clause 15, and
 - lodge the form with a Collector for a State, or with the Comptroller, at any time after the production of the film and before 1 April 1993;
 - .. this date has been specifically chosen to give effect to the Government's intention that all bounty claims must be lodged within, or within a reasonably short time after, the first three years of the bounty period, being the period that the Government has announced its intention to fund the bounty (paragraph 3(a));
- .. it is anticipated that, although

bounty will not become payable until the end of the bounty period, producers will take advantage of the provision enabling application for advances on account of bounty in relation to bountiable photographic film produced during the first 3 years of the scheme;

.. in accordance with Clause 11, such advances are repayable if the producer fails to comply with the registration conditions specified in Clause 16 throughout the entire 5 year period of the scheme paragraph 7(3)(c);

- . the Comptroller is then obliged to examine the claim and either (subclause (3)):
 - conditionally approve, in writing, the payment of the amount on 1 January 1995, unless the claimant has earlier ceased to be a registered person; or
 - 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, the Comptroller shall conditionally approve, in writing, the payment of the amount on 1 January 1995, unless the claimant has earlier ceased to be a registered person; 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 29(1)(a) and (b))
- . the Comptroller is obliged to provide to the claimant a notice setting out the decision where the claim is unsuccessful or where there is a delay of more than 30 days in the processing of a successful claim (subclause (4)).

Rate of bounty

Clause 10 specifies the rate of bounty payable in respect of the production of bountiable photographic film as being an amount equal to \$3.75 for each square metre of film produced.

Advances on account of bounty

Clause 11 permits a registered producer of bountiable film to receive an advance on account of the amount of bounty that person will receive on 1 January 1995 for the production of bountiable photographic film, if the producer retains registration throughout the entire bounty period.

- . The facility to receive advances on account of bounty is common in modern bounty legislation. A common feature is the provision that, if the bounty does not ultimately become payable to the producer, that money must be repaid to the Commonwealth subclause 11(3);
 - for instance, such advances are repayable if the producer fails to comply with the registration conditions specified in Clause 16 throughout the entire 5 year period of the scheme paragraph 7(3)(c);
- . it is anticipated that, although bounty will not become payable until the end of the bounty period, producers will take advantage of this provision to apply for advances on account of bounty in relation to bountiable photographic film produced during the first 3 years of the scheme.

Availability of money for payment of bounty or advances

Clause 12 confers, subject to the regulations, a discretion on the Comptroller to defer bounty payments, or make payments in such order as he or she considers appropriate, where he or she is of the opinion that the amount claimed for the payment of advances on account of bounty in a financial year will exceed the amount appropriated for that financial year subclause (1);

- . subclause (2) provides that, if money is not appropriated by the Parliament in a

financial year for the purposes of making payments of bounty or advances on account of bounty, then a person is not entitled to be paid bounty or advances on account of the bounty in that year;

- this is a provision common to most modern bounty Acts - see for example section 12 of the Bounty (Books) Act 1986.

Variation of excessive claim

Clause 13 imposes an obligation on a recipient of bounty to lodge an acknowledgment of error, within 28 days, where the recipient becomes aware that the original claim for bounty exceeds by more than \$200 the claimant's entitlement (subclause (1)):

- . the penalty for contravening sub-clause (1) is \$3,000;
- it should be noted that pursuant to amendments to the Crimes Act 1914 effected by the Crimes Legislation Amendment Act 1987 (Act 120, 1987), penalties prescribed in legislation may be increased by up to five times where the offender is a body corporate rather than a natural person. This applies to all penalties in this Act.
- . the procedure in subclause (2) for the lodgement of an acknowledgment form is similar to that governing original claims (see subclause 2(2));
- . upon examination of the acknowledgment, where the Comptroller is satisfied there has been an overpayment by more than \$200, he or she shall cause to be served on the claimant a demand for the repayment of the amount of the overpayment (subclause (4));
- the decision of the Comptroller for the above purposes is reviewable by the Administrative Appeals Tribunal (paragraph 29(1)(c)).

Other adjustments of claims

- Clause 14 provides that the Comptroller shall serve a demand for the repayment of an overpayment of a claim for bounty in excess of \$200, where the Comptroller discovers such an overpayment in a situation other than through an acknowledgment under Clause 13 (subclause (1));
- . the above decision of the Comptroller is reviewable by the Administrative Appeals Tribunal (paragraph 29(1)(d));
 - . where the amount of an overpayment referred to in sub-clause (1) is less than \$25,000 and the Comptroller is satisfied that:
 - the overpayment was due to an error that did not involve any failure on the part of the person who lodged the claim to comply with the Act or the regulations, and repayment of the overpayment would be unreasonable, or cause that person undue hardship; or,
 - the cost of endeavouring to recover the overpayment is so high and the amount likely to be recovered as a result of endeavouring to recover the overpayment is so low that taking action to recover the overpayment would not be justified;
- the Comptroller may refrain from causing a demand to be served (subclause (2));
- . where the Comptroller elects not to proceed for a repayment, particulars of the relevant amount shall be included in the annual report of the Australian Customs Service tabled in Parliament for the year in which the Comptroller so acted (subclause(3)).

Forms

- Clause 15 prescribes the conditions for the signing and witnessing of the various forms which are required to be lodged pursuant to the Act. Authorised persons are permitted to submit claims or lodge returns on behalf of the legal claimant (be that claimant a natural person or a body corporate), which is intended to assist claimants and expedite the processing of claims by the Australian Customs Service.

PART 4 - ADMINISTRATION

Registration of Persons

Clause 16 prescribes the manner of applying for registration under the Scheme, as well as specifying the conditions that must be met by a person who wishes to be registered for the purposes of this Act. It is a precondition to bounty eligibility that the bounty claimant (ie the producer of the film) is, at all times during the period to which the Act applies, a registered person (see subclause 7(3));

A person who wishes to apply for registration must apply on the appropriate approved form before 1 March 1990 and must, at that time be a producer of bountiable photographic film at commercial or industrial premises in Australia (subclause (2)). Should the person satisfy these requirements, and any registration criteria which might be prescribed by regulation under subclauses (5), (7) and (7A), the Comptroller shall either sign a notice of registration, and serve the same on the applicant, or, if the person fails to meet the requirements, decline to register the person (subclause (3));

- . registration takes effect from and including 1 January 1990 subclause (4);
- . This decision is reviewable on its merits by the Administrative Appeals Tribunal: paragraph 29(1)(e);
- . it is proposed that the regulations will prescribe registration criteria to give effect to the following policy:
 - a requirement that a registered person perform finishing operations for the whole of the period to which the Act applies;
 - a requirement that a registered person maintain prescribed production levels, employment levels, and in a plant of a prescribed production capacity;
 - a requirement that a registered person enter into a photographic industry development plan for the period to which the Act applies, with that plan subject to an annual review.

subclause (10) provides that a registration may be cancelled by the Comptroller where the Comptroller becomes satisfied that the person

fails to meet any of the registration criteria specified in subclauses (5), (7) and (7A);

- . the decision to cancel a registration is reviewable on its merits by the Administrative Appeals Tribunal (paragraph 29(1)(f)).

Accounts

Clause 17 makes eligibility for bounty conditional upon the maintenance of appropriate commercial records. Such records are required to be:

- . kept in writing in the English language (or be readily accessible and convertible into writing in the English language (subclause (2)); and
- . retained for at least 3 years after the date of lodgement of a claim for bounty pursuant to Clause 9, or at the end of the period to which the Act applies, whichever is the later (subclause (1)).

Securities

Clause 18 confers upon the Comptroller the power to require a person to whom bounty could become payable to give security for compliance with the Act, and any regulations made under it. Payment of bounty may be withheld until the required security is given:

- . a decision of the Comptroller requiring a person to give a security is reviewable by the Administrative Appeals Tribunal (paragraph 29(1)(g)).

Appointment of authorised officers

Clause 19 empowers the Comptroller to appoint officers of the Australian Customs Service as authorised officers upon whom administrative functions may be conferred for the purposes of the Act.

Entry on premises occupied by registered person

Clause 20 empowers an authorised officer to enter premises occupied by a registered person (other than residential premises), at any reasonable time to inspect any bountiable photographic film which is being or is going or intended to be produced, or

any step in the production process, or the accounts, books, documents or other records relating to the production process of bountiable photographic film, and take copies and retain extracts of any such records (subclause (1));

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

Entry on other premises

Clause 21 lists the circumstances which permit authorised officers to enter other types of premises (ie. not the business premises referred to in Clause 20).

- . where an authorised officer has reasonable grounds for believing that premises are premises where the production of bountiable photographic film is being carried out, has been carried out, or will be carried out, or are premises in which there are kept any accounts, books, documents or other records relating to the production of bountiable photographic film, the authorised officer may make an application to a Magistrate for a warrant authorising the authorised officer to enter the premises and exercise the powers of an authorised officer (described below) (subclause (2));
- the powers of an authorised officer are:
 - . to inspect any bountiable photographic film in respect of which a "relevant activity" has been, is being, or is intended to be carried out;
 - .. "relevant activity" is defined in clause 4 as being any

activity that is a part of the sensitizing or finishing operations undertaken in the course of producing the bountiable photographic film;

- . to inspect any step in the carrying out of a "relevant activity" in respect of bountiable photographic film;
- . to inspect accounts, books, documents and other records relating to the carrying out of a "relevant activity" in respect of bountiable photographic film, including the making of copies of, or taking and retaining extracts from such records, (subclause (4));

- . if the Magistrate is satisfied there are reasonable grounds for believing the premises to be premises referred to above, and the occupiers of the premises have not given consent for the authorised officer to enter the premises to exercise the powers of an authorised officer, he or she may grant a warrant authorising the authorised officer to enter the premises during such hours as the warrant specifies, or at any time, and if necessary by force, and to exercise the powers of an authorised officer (subclause (3)).

Power to require persons to answer questions and produce documents

Clause 22

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 photographic film, and provides for the withholding of bounty payments until the requirements of this Clause are met. The authorised officer must believe on reasonable grounds that the particular person is capable of giving information relevant to activities in respect of bountiable photographic film (subclause (1));

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

.. penalty for breach - \$3,000, or 6 months imprisonment, or both;

- it should be noted that pursuant to amendments to the Crimes Act 1914 effected by the Crimes Legislation Amendment Act 1987 (Act 120, 1987), penalties prescribed in legislation may be increased by up to five times where the offender is a body corporate rather than a natural person. This applies to all penalties in this Act.

- . subclause (5) prevents the use in criminal proceedings against a person, except under subclause (3) or paragraph 24(3)(a) of the Act, of self-incriminating information given and documents produced by that person.

Power to examine on oath, etc.

Clause 23 provides for an authorised officer to examine on oath or affirmation persons attending before him or her.

Offences

Clause 24 creates offences for:

- . refusing or failing to attend before a Collector or an authorised officer, or to take an oath or make an affirmation, or to answer questions or produce documents when so required pursuant to this Act (subclause (1));
 - .. penalty - 6 months imprisonment;
- . obtaining or attempting to obtain bounty that is not payable (subclause (2));
 - penalty - imprisonment for five years;
- . knowingly making statements, orally or in writing, that are false or misleading in a material particular, or presenting an account, book or document that is to the knowledge of the person false or misleading in a material particular (subclause (3));
 - penalty, or imprisonment for 6 months;
- . where, in proceedings for an offence against subsections (2) or (3),

- it is necessary to establish a state of mind on the part of a corporation, it is sufficient to show that a director, servant or agent acting within the scope of his or her actual or apparent authority had that state of mind (subclause (4));
- any conduct so engaged in by the director, servant or agent (or any other person at the direction of a director, servant or agent) is deemed to have also been engaged in by the corporation (subclause (5));

Time for prosecutions

Clause 25 provides that proceedings for offences against this Act may commence within 3 years of the alleged commission of the offence.

Recovery of bounty on conviction

Clause 26 empowers a court to order a person convicted of an offence under subclauses 13(1) or 24(2) or (3) to refund to the Commonwealth the amount of bounty wrongfully obtained, in addition to imposing the penalty prescribed in those sub-sections against that person (subclause (1));

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

Recovery of repayments

Clause 27 allows the Commonwealth to recover amounts owing to it (by an action in a court for a debt due) particularly in situations where:

- . a person has overclaimed for bounty (clause 13), or the Comptroller-General discovers an overpayment of bounty (clause 14) (subclause (1));
- . amounts owing to the Commonwealth by a person in the situations described in subclause (1) may be deducted from any amount that is payable to that person under the Act, and where such a deduction is made, the balance which is paid will be deemed to have been the full amount (subclause (2)).

PART 5 - MISCELLANEOUS

Return for Parliament

Clause 28 provides for the furnishing by the Comptroller to the Minister (subclause (1)) and the tabling in Parliament by the Minister (subclause (2)) of annual returns in relation to the payment of bounty under this Act during that particular year.

Application for review

Clause 29 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 30 obliges the Comptroller-General to advise persons whose rights are affected as a result of a decision by the Comptroller pursuant to one of the provisions listed in Clause 29 that there is a right of review to the Administrative Appeals Tribunal, although subclause (2) provides that failure to issue this notice does not effect the validity of the Comptroller's decision.

Appropriation

Clause 31 provides for payments of bounty or advances on account of bounty to be paid out of money appropriated by Parliament for the purpose.

Regulations

Clause 32 permits the making of regulations where required by the Act, or where it is necessary or convenient to do so to give effect to the Act.

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