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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BOUNTY LEGISLATION AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

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



BOUNTY LEGISLATION AMENDMENT BILL 1995

OUTLINE

This Bill is an omnibus measure proposing the validation of certain Ministerial declarations and the amendment of three Bounty Acts; namely, the *Bounty (Computers) Act 1984* (the Computers Act), the *Bounty (Machine Tools and Robots) Act 1985* (the MTR Act) and the *Bounty (Fuel Ethanol) Act 1994* (the Fuel Ethanol Act).

The three elements proposed in the Bill are:

- (i) *the validation of certain untabled Ministerial declarations made under the Computers Act and the MTR Act*

Part 3 of the Bill (clauses 4 to 7 refer) effectively validates the payments of bounty which have been made pursuant to 32 declarations gazetted under the Acts since their respective commencements 10 years ago. All of these declarations ceased to have effect when they were not tabled in Parliament as required under their respective heads of power (section 5 of the Computers Act, and sections 6, 7 and 8 of the MTR Act). This failure to table also invalidated decisions taken in respect of the production of equipment purportedly made bountiable by the declarations, including the payment of any bounty.

- Clauses 5 and 6 propose to validate the declarations, and any decisions made, or acts or things done, in reliance on those declarations, from the time of their commencement as notified in the Gazette, until the Royal Assent commencement of this Bill.
 - Clause 7 expressly extinguishes the Commonwealth's right to recover any amounts paid on the production of goods purportedly made bountiable under the declaration facility of both Acts. This will overcome the situation of Commonwealth officers having a duty to recover what have become unauthorised payments out of Consolidated Revenue.
- (ii) *the incorporation of the effect of the 3 valid current declarations into the Computers Act and the MTR Act.*

Schedules 2 and 3 to the Bill incorporate into the relevant principal Acts the various classes of goods which are presently bountiable via the declaration facility in Section 5 of the Computers Act, and sections 6 to 8 of the MTR Act. The goods to be inserted under the relevant definitions of "bountiable equipment" have been the subject of new declarations Gazetted in August 1995, for tabling in October 1995.

- (iii) *amendments to the eligibility criteria under the Fuel Ethanol Act to give effect to the 1995 Budget Decision to ensure all fuel ethanol producers can claim bounty on post 1 July 1994 production on the same basis.*

Schedule 1 to the Bill gives effect to the Government's Budget decision by removing the current legislative distinction between fuel ethanol producers who were producing prior to the 1 July 1994 commencement of the Fuel Ethanol Act, and those who commenced production after the commencement of that Act.

- Item 2 of Schedule 1 to the Bill introduces the amended bounty eligibility condition to apply to all fuel ethanol producers, which will now make the total amount of fuel ethanol produced from biomass feedstocks post 1 July 1994 eligible for bounty if that volume exceeds 350,000 litres per year.

FINANCIAL IMPACT STATEMENT

The financial implications of the measures proposed in the Bill are as follows:

i) Computers Act and MTR Act

- the validation of Ministerial declarations made under each of these Acts will preserve the legal effectiveness of monies already paid out under the relevant declarations since the commencement of each Act. The amendments will not result, however, in any additional outlays.

ii) Fuel Ethanol Act

- the amendments to the eligibility criteria under the Fuel Ethanol Act are expected to cost \$1 million in total over the 3 year life of the bounty (ie 1 July 1994 to 30 June 1997). However, that additional cost is to be accommodated within the current legislative allocation for the bounty.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

This clause provides for the Act to be cited as the *Bounty Legislation Amendment Act 1995*.

Clause 2 - Commencement

This clause provides for the commencement upon Royal Assent of the Act, except for the amendments in Schedule 1.

Subclause (2) provides for the retrospective commencement on 1 July 1994 for Schedule 1, being the date on which the *Bounty (Fuel Ethanol) Act 1994* (the Fuel Ethanol Act) commenced. That Schedule amends the Fuel Ethanol Act to extend bounty eligibility to existing producers of fuel ethanol on the same basis as new producers, for the full 3 years of the bounty.

PART 2 - AMENDMENTS OF BOUNTY ACTS

Clause 3 - Amendments

This clause provides that the Acts specified in the 3 Schedules are amended as set out in the relevant items in the Schedules.

Other items in the Schedules, which are transitional and savings provisions, are to have effect according to their terms. The 3 Schedules relate to the 3 Bounty Acts to which this amending Act relates; the *Bounty (Computers Act) 1984* (the Computers Act), the *Bounty (Machine Tools and Robots) Act 1985* (the MTR Act), and the Fuel Ethanol Act.

PART 3 - VALIDATION OF CERTAIN ACTS AND THINGS DONE UNDER BOUNTY ACTS

Clause 4 - Definitions

This clause defines the terms "bounty declaration" and "rely on" for the purposes of this Part of the Act.

- "*bounty declaration*" is defined to mean a declaration, or a revocation or amendment of a declaration, made or purportedly made under section 5 of the Computers Act or section 6, 7 or 8 of the MTR Act before this Act receives the Royal Assent, whether validly made or not. The validation provision set out in

clauses 5 and 6 below will therefore apply to amendments and revocations of declarations, as well as to the substantive declarations. This definition covers all declarations made under the Computers Act and the MTR Act, up to the time this Act receives the Royal Assent.

- "*rely on*" is defined to include "take account" of to ensure that all acts or things done under the Acts which have any connection with the bounty declarations will be validated by clause 6 below.

Clause 5 - Validation of bounty declarations

This clause provides that all bounty declarations made before this Act receives the Royal Assent are to be considered valid declarations from the time the declaration was published in the *Gazette* until this Act receives the Royal Assent (subclause 5(1) refers). If any bounty declaration was to have had effect from a time earlier than its publication, it is validated from that time until this Act receives the Royal Assent (subparagraph (1)(a)(ii) refers).

If a declaration was revoked or amended by a later declaration (including a later declaration that also relies on this Act for its validity - subclause (2) refers), it is only validated until the date of its revocation or amendment (paragraph (1)(b) refers).

All declarations made before this Act receives the Royal Assent are to be revoked on the day of Royal Assent (subclause (3) refers). This provision, in combination with the incorporation into the Computers Act and the MTR Act of all current declarations (see Schedules 2 & 3), means that from the date that this Act receives the Royal Assent, bounty eligibility under each of those Acts will be determined **ONLY** against the criteria appearing in the Acts themselves, without reference to any declarations.

This provision, however, does not remove the ability of the Minister to make use of the declaration facility at some time in the future, to effectively extend bounty eligibility to additional classes of computer equipment or machine tools and robots.

Section 50 of the *Acts Interpretations Act 1901* is specifically applied so that the revocations of the validated declarations upon Royal Assent will not remove any claimant's right to claim in the future an amount of bounty to which he or she is entitled by virtue of a revoked declaration (subclause (4) refers).

This validation clause does not have the effect of validating any bounty declaration that has been disallowed by either House of Parliament (subclause (5) refers).

Clause 6 - Validity of acts relying on bounty declarations

Subclause (1) validates decisions of the Comptroller-General of Customs, the Chief Executive Officer of Customs and the Minister which were made relying on the bounty declarations. The purpose of this provision is to ensure that decisions made to accept or reject claims for bounty, or assessments of returns of factory costs, or decisions to pay bounty, are valid to the extent that those decisions were made in reliance on a bounty declaration.

Subclause (2) ensures that any act or thing done by any person or body relying on a bounty declaration, or relying on a decision which relied on a bounty declaration, is also to be considered validly done. This again effectively validates all bounty claims lodged which relied on the bounty declarations.

Both subclauses expressly apply to future, as well as past, decisions, or acts or things done. This will ensure that claimants can continue to lodge, and the Chief Executive Officer of Customs can continue to process, claims for bounty which relate to goods produced at a time when the declarations were purportedly operating to confer bounty eligibility on the goods covered by the relevant declaration.

Clause 7 - Taking account of payments made before this Act received the Royal Assent

This clause has been included to effectively preserve the status quo insofar as payments of monies in reliance on bounty declarations are concerned. The need for the clause arises as a result of the Commonwealth's legal advice to the effect that the legislative validation of the bounty declarations and of decisions, and acts and things done in reliance on the bounty declarations, would not of itself remedy the problem of monies having been paid out of the Consolidated Revenue without a proper appropriation.

- The advice drew attention to the fact that payments of "bounty" made on the basis of the untabled declarations would not be payments authorised by the relevant Acts. Money is appropriated by Parliament for payments of bounty under each Act (s.34, Computers Act; s.42, Machine Tools Act). Section 83 of the Constitution prohibits money being drawn from the Treasury of the Commonwealth except under appropriation by law. Payments made on the basis of the untabled declarations would not be payments under those Acts, in the sense that the Acts did not authorise them. Accordingly, the payments would be in breach of s.83 of the Constitution, and the validation of the declarations at a subsequent date could not remedy this initial lack of authority to make the bounty payments.
- The advice also noted that Commonwealth officers might well have a duty to recover such unauthorised payments from Consolidated Revenue. To remove this possibility, especially in view of the fact that it was always intended that the various bounty payments would be made, the advice recommended an express legislative provision to extinguish any right to recover amounts paid in reliance on the invalid declarations.

This clause gives effect to that course by expressly extinguishing the Commonwealth's right to recover any amount paid on the production of goods purportedly made bountiable under the declaration facility of each Act (subclauses (1) & (4) refer).

The Commonwealth's right to recover excess payments through the express "correction" provisions of each Act and amounts wrongfully obtained as a result of an offence against either Act, however, is expressly retained (subclause (3) and paragraphs (4)(a) and (b) refer).

Further, if a person received an amount under a bounty declaration purporting to be an amount of bounty less than or equal to his or her actual entitlement, then any additional bounty entitlement that the person might have is to be reduced by the amount of money already received (subclause (2) refers). The clause is intended to prevent a claimant raising an argument for a completely new payment of the entire bounty entitlement on the basis that the amount previously obtained (which the Commonwealth is now expressly prevented from recovering) was not in fact an amount of bounty, but some other amount.

SCHEDULE 1

AMENDMENTS OF THE BOUNTY (FUEL ETHANOL) ACT 1994

Item 1 - Subsection 5(1) (definition of *new production*)

This item omits the reference to the definition of "new production" in subsection 5(1) as a result of the repeal of the substantive definition of that phrase in section 6 of the Act (item 2 refers).

Item 2 - Sections 6 and 7

This item repeals sections 6 and 7, and introduces a new section 7, as a result of the removal of the "new production" definition as follows:

- The repeal of section 6 is a consequence of the decision to remove the legislative distinction between fuel ethanol producers who were producing prior to the 1 July 1994 commencement of the Act, and those who commenced production after that date. That distinction effectively imposed an extra production requirement on pre-1 July 1994 producers, by only making potentially bountiable that production which exceeded the average of the previous two years production. There was no such requirement on post 1 July 1994 producers.

New section 7 - Meaning of *bountiable fuel ethanol*

- New section 7 introduces the same bounty eligibility condition which used to apply in section 7, but which will now be the sole production requirement which must be satisfied by all fuel ethanol producers, irrespective of whether or not they were in production prior to the 1 July 1994 commencement of the Act. The new criterion is simply whether or not the total volume of fuel ethanol produced in a given bounty year equals or exceeds 350,000 litres. If it does, the whole amount is bountiable. If it does not, none of the amount is bountiable.

Item 3 - Section 8

This item effects a technical drafting change to Section 8 of the Act, to substitute the phrase "bounty year" instead of the word "year". This should clarify that for the purposes of calculating a person's production of bountiable fuel in a given period, the relevant period is the financial year 1994-95, 1995-96, or 1996-97, and not the respective calendar years.

Item 4 - Section 9

This item effects a technical drafting change to Section 9 of the Act, to remove the word "other" from the section.

Item 5 - Paragraph 12(4)(a)

This item omits the word "new" appearing before the word "production" in paragraph 12(4)(a) of the Act. This change is consequential on item 2 above, which removes the definition of "new production" for the reasons set out under that item.

Item 6 - Saving of applications under section 12 of the *Bounty (Fuel Ethanol) Act 1994*

This item introduces the customary savings provision which follows the kind of change effected by item 2, which removes a concept from the Act ("new production") on which subsidiary obligations were created. In this instance, an application for registration under section 12 of the Act requires a statement by the applicant concerning the fact that there will be "new production" of a certain minimum amount of fuel ethanol. With the removal of this requirement insofar as it related to new production (item 5 refers), this item preserves the validity of applications lodged before the commencement of this change, which are now deficient as regards this point.

Item 7 - Extended time for application and processing applications for additional production allocation

This item effectively amends Section 15 of the Act, which provides an ability for a claimant to seek an additional production allocation for the second bounty year (financial year 1995-96) on the basis of the eligibility amendments in this Act. With the removal of the "new production" definition (item 2 refers), the extra production requirement on pre 1 July 1994 producers is removed, making it likely that an additional production allocation for these producers is possible for the second bounty year.

Item 7(3) makes it administratively possible for an additional production allocation to be processed under Section 15 by extending the time currently in subsection 15(2) from 31 July 1995 to the day 3 months after day on which this Act receives the Royal Assent.

Item 8 - Paragraph 22(a)

This item omits the word "new" appearing before the word "production" in paragraph 22(a) of the Act. This change is consequential on item 2 above, which removes the definition of "new production" for the reasons set out under that item.

Item 9 - Saving of decisions under the *Bounty (Fuel Ethanol) Act 1994*

This item introduces a similar savings provision to that in item 6, to preserve decisions made in relation to registration and production allocation applications, or additional production allocation applications, in spite of the fact that those decisions would have been made having regard to the requirement of the definition of "new production", which has now been repealed (item 2 refers).

Item 10 - Transitional provision - extra time to claim bounty

This item extends the time permitted to make a claim for bounty in subsection 26(3) of the Act by 3 months from the date on which this Act receives the Royal Assent. This is a standard transitional provision, to allow claimants to take advantage of the increased bounty entitlement which flows from the principal amendments effected by this Act.

Items 11 and 12- Subsection 28(2)

These items effect a technical drafting amendment to subsection 28(2) of the Act to clarify that a payment of bounty does not have to take place in the same year as the production for which the bounty is payable.

Item 13 - After subsection 28(2)

This item inserts a new subsection 28(2A), to ensure that the total amounts available for payment under the Act are not affected by the eligibility amendments proposed by this Act, and that the order for making decisions concerning bounty amounts available in a particular year are prioritised in a chronological way.

Item 14 - Transitional provision - roll-over taken not to have occurred before Royal Assent

This item effectively holds over the roll-over of available money that might have occurred after bounty year 1 (pursuant to section 28 of the Act) to a period after the commencement of this Act. This will enable the additional payments of bounty anticipated as a result of these amendments to proceed.

SCHEDULE 2**AMENDMENTS OF THE BOUNTY (COMPUTERS) ACT 1984****Item 1 - Subsection 3(1) (paragraph (a) to (eb) (inclusive) of definition of *bountiable equipment*)**

This item amends subsection 3(1) to effect a technical drafting change to insert the word "or" between each paragraph of the definition of "bountiable equipment", in accordance with current Commonwealth drafting policy.

Item 2 - Subsection 3(1) (definition of *bountiable equipment*)

This item inserts new paragraphs (ec), (ed) and (ee) into the definition of "bountiable equipment" to incorporate the effect of declarations made under subsection 5(1) of the Computers Act relating to the classes of computer equipment described in the new paragraphs (Declaration No. 1 of 1995 in Gazette No. S334 of 31 August 1995 refers and Declaration No. 4 of 1995 Gazette No. S345 of 8 September 1995 refers)

Item 3 - Subsection 3(1) (definition of *bountiable equipment*)

This item amends subsection 3(1) to effect a technical drafting change to insert the word "or" at the end of paragraph (f) of the definition of "bountiable equipment", in accordance with current Commonwealth drafting policy.

Item 4 - Subsection 3(1) (definition of *computer based machine*)

This item omits and substitutes the definition of "computer based machine" to remove the requirement that a machine must be the subject of a declaration in force under subsection 5(2) of the Computer Act before it can be considered "bountiable equipment" under paragraph (c) of the definition.

The change incorporates the effect of a "blanket" declaration made under subsection 5(2) (Declaration No. 1 of 1995 published in Commonwealth of Australia Gazette No. S334 on 31 August 1995). That declaration has the effect of covering the entire class of goods which might possibly be considered under paragraph (c) of the definition of "bountiable equipment". Therefore the incorporation of its effect into the Computer Act removes the need for any future declarations to be made under subsection 5(2).

Item 5 - Subsection 5(2)

This item omits subsection 5(2) and thereby the power to make declarations relating to classes of "computer based machine". This amendment is consequential upon the amendment to the definition of "computer based machine" effected by item 4 above, which removes the need for any future declarations to be made under subsection 5(2).

Item 6 - Subsections 5(3), (4) and (5)

This item effects consequential amendments to subsections 5(3), (4) and (5) to omit references to subsection 5(2) which is omitted by item 5 above.

Item 7 - Subsection 5(8)

This item amends subsection 5(8) to effect a technical drafting change to correct the citation of the *Industry Commission Act 1989*.

SCHEDULE 3

AMENDMENTS OF THE BOUNTY (MACHINE TOOLS AND ROBOTS)
ACT 1985**Item 1 - Subsection 4(1) (paragraphs (a) to (g) (inclusive) of definition of *bountiable equipment AA*)**

This item amends subsection 4(1) to effect a technical drafting change to insert the word "or" between each paragraph of the definition of "bountiable equipment AA", in accordance with current Commonwealth drafting policy.

Item 2 - Subsection 4(1) (paragraph (j) of definition of *bountiable equipment AA*)

This item amends subsection 4(1) to effect a technical amendment to insert the word "or" at the end of the final paragraph of the definition of "bountiable equipment AA" as a consequence new paragraph (k) which is to be inserted by item 3 below.

Item 3 - Subsection 4(1) (definition of *bountiable equipment AA*)

This item amends subsection 4(1) by inserting new paragraph (k) into the definition of "bountiable equipment AA" to incorporate the effect of a declaration made under subsection 6(2) of the MTR Act relating to parts for bountiable equipment (Declaration No. 3 of 1995 in Gazette No. S334 of 31 August 1995 refers).

Item 4 - Subsection 4(1) (paragraph (b) of definition of *independent machine*)

This item amends the definition of "independent machine" to incorporate the effect of a declaration made under subsection 6(7) of the MTR Act. (Declaration No. 3 of 1995 in Gazette No. S334 of 31 August 1995 refers).

Item 5 - Subsection 4(1) (paragraphs (a), (b) and (c) of definition of *robotic machine*)

This item amends subsection 4(1) to effect a technical drafting change to insert the word "and" between each cumulative paragraph of the definition of "robotic machine", in accordance with current Commonwealth drafting policy.

Item 6 - Subsection 4(1) (paragraph (f) of definition of *robotic machine*)

This item amends subsection 4(1) to effect a technical drafting change to insert the word "or" at the end of paragraph (f) of the definition of "robotic machine", in accordance with current Commonwealth drafting policy.

Item 7 - Subsection 4(1) (definition of *robotic machine*)

This item amends the definition of "robotic machine" to incorporate the effect of a declaration made under subsection 6(5) of the MTR Act to exclude certain machines from this definition (Declaration No. 3 of 1995 in Gazette No. S334 of 31 August 1995 refers).

