

1985

HOUSE OF REPRESENTATIVES

BOUNTY (COMMERCIAL MOTOR VEHICLES) AMENDMENT BILL (NO. 2) 1985

EXPLANATORY MEMORANDUM

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

BOUNTY (COMMERCIAL MOTOR VEHICLES) AMENDMENT BILL (No. 2) 1985

OUTLINE

This Bill proposes to amend the Bounty (Commercial Motor Vehicles) Act 1978 as consequence of the Government's announcement on 6 August 1985 concerning to the new assistance arrangements for the heavy commercial vehicle, parts and accessories industries.

This Bill is part of the new assistance package and gives effect to the Government's decision to phase out completely the current 20% bounty over 3 years, commencing on 1 January 1986 and concluding on 31 December 1988.

The proposed phasing arrangements provide for payment of bounty at the following rates:

- where assembly of the commercial motor vehicle is completed during
 - (i) 1986 - 16%,
 - (ii) 1987 - 12%,
 - (iii) 1988 - 8%;
- the bounty is payable at the prescribed rate on an amount equal to the sum of the into-store costs to the assembler of the vehicle of the components used in the assembly of that vehicle (new Section 14D).

The Bill also incorporates a number of clauses (notably clauses 7 to 12) which modernise the administrative provisions in the existing Act, similar to provisions embodied in bounty legislation since 1984.

FINANCIAL IMPACT STATEMENT

It is estimated that the cost of bounty assistance during the phase-out period to which this Bill relates will be: \$1.25 million for the period 1 January 1986 to 30 June 1986; \$2 million in fiscal year 1986-87; \$1.4 million in 1987-88; and \$0.6 million from 1 July 1988 to 31 December 1988. All values are at current prices.

NOTES ON CLAUSES

Short Title, etc

Clause 1 is a formal machinery clause detailing the formal citation for this amendment Act and defining the Bounty (Commercial Motor Vehicles) Act 1978 as the Principal Act for the purposes of this Act.

Commencement

Clause 2 provides for the Act to come into operation on the day on which it receives the Royal Assent.

Heading to Part I

Clause 3 is a technical drafting clause, introducing a new part heading into the Principal Act.

PART I - PRELIMINARY

Interpretation

Clause 4 amends Section 3 of the Principal Act by:

- . adding a definition of "approved form", similar to the definition for that term which has been incorporated in all bounty legislation since 1984;
- . adding definitions for "Australian content percentage" and "authorised officer", which are consequent upon the new Sections 5A and 15 respectively;
- . inserting a new definition of "period to which this Act applies", to extend the current expiry date for the Principal Act from 31 December 1985 to 31 December 1988;
- . adding a definition of "prescribed premises", which is consequent upon the new registration of premises criteria in Section 14N;
- . adding a new sub-section (4), which sets out the circumstances in which 2 persons are to be deemed to be associates of each other for the purposes of the Act.

Australian content percentage

Clause 5 introduces a new Section 5A into the Principal Act, which sets out the formula for ascertaining the Australian content percentage of a prescribed component used in the assembly of a bountiable vehicle, for the purposes of determining whether that particular vehicle component is eligible for bounty assistance (proposed new sub-section 14D(2) requires the Australian content percentage of a component to be not less than 65%),

the new formula $\frac{D - E - F}{D - E}$

applies to bountiable vehicles assembled on or after 1 January 1986 (new Part III), and is similar to Section 5 of the Principal Act (which applies the existing formula to bountiable vehicles completely assembled before 1 January 1986 (new Part II),

in the formula

.. D represents the lowest ex-works (factory gate) selling price payable for a vehicle component of the same kind as the component delivered by the manufacturer to the assembler of the commercial motor vehicle;

.. E represents the cost to the manufacturer for raw materials, if any, used by the manufacturer in manufacturing such vehicle components;

.. F represents the duty paid cost to the manufacturer for imported vehicle components, if any, used by the manufacturer in the manufacture of vehicle components for the commercial motor vehicle

elements D, E and F of the above formula correspond to elements A, B and C respectively in the existing formula, with the exception that the obligation on the Comptroller-General to determine the various amounts in each of the elements has been deleted in the new formula. This should expedite the processing of claims and simplify the administration of the scheme generally. The opportunity to verify costs or amounts included in the new formula will continue to be safeguarded though, by expressly requiring particulars of the Australian content percentage to be included in the claim for bounty (proposed new sub-section 14H(2)), and by allowing the Comptroller-General to determine those costs or amounts in certain prescribed circumstances (proposed new Section 14C).

Specification of bounty

Clause 6 amends Section 7 of the Principal Act to introduce a new paragraph (3)(ba), relating to the requirement that all steps in the assembly of a bountiable vehicle, on or after 1 January 1986, be carried out at prescribed premises. This is consequential on the new definition for such premises in Clause 4 and new Section 14N (concerning the criteria for the registration of premises), and essentially reflects the new terminology for registered premises.

PART II - BOUNTY ON CERTAIN MOTOR VEHICLES ASSEMBLED BEFORE 1 JANUARY 1986

Application of Part II

Clause 7 introduces a new Part II into the Principal Act, which has the effect of placing Sections 8, 9, 10, 11, 12, 13 and 14 of the Principal Act under this Part. The new Part II only applies to bounty on bountiable vehicles, the assembly of which was completed before 1 January 1986, from which date the new bounty assistance arrangements and administrative procedures contained in Part III are deemed to commence (proposed new Section 14A).

PART III - BOUNTY ON CERTAIN MOTOR VEHICLES ASSEMBLED ON OR AFTER 1 JANUARY 1986

Clause 8 repeals section 15 of the Principal Act and introduces a new Part III into the Principal Act, to cater for the new bounty assistance arrangements and administrative procedures on the production in Australia of commercial motor vehicles, resulting from the Government's announcement on 6 August 1985 to phase out bounty assistance to the industry over 3 years commencing on 1 January 1986. The new Part provides as follows:

Sub-clause 8(1)

Application of Part III

New Section 14A

This section applies the new bounty assistance arrangements and administrative procedures contained in the 15 sections of Part III to bountiable commercial motor vehicles, the assembly of which was completed on or after 1 January 1986 (the day after the expiry of the assistance arrangements under the Principal Act).

Years to which this Part applies

New Section 14B

This section specifies the further periods for which bounty assistance is to be provided under the Act, pursuant to the Government's announcement on 6 August 1985. The new assistance will commence on 1 January 1986 (the day after the expiry of the assistance arrangements under the Principal Act) and conclude on 31 December 1988.

Determination of certain costs, etc

New Section 14C

This section provides a facility for the Comptroller-General to determine certain costs or amounts relating to the Australian content of a component used in the assembly of a bountiable vehicle, and the actual into-store cost to the assembler of the vehicle of such components;

- proposed sub-sections (1) and (2) provide that where the Comptroller-General is unable to verify that the selling price of a component supplied by a manufacturer for use by an assembler of a bountiable vehicle is the lowest ex-works price for such a component (element D of the Australian content percentage formula in new Section 5A), or where the Comptroller-General is unable to verify the actual into-store cost of a component delivered to an assembler for use by the assembler in the assembly of bountiable vehicles (new sub-section 14D(3)), or where the Comptroller-General forms the opinion that the price or cost is incorrect or overestimated, the Comptroller-General may determine that price or cost. Such determinations are reviewable by the Administrative Appeals Tribunal (new sub-section 22(2))
- proposed sub-section (3) provides that where the Comptroller-General is unable to verify a cost to a manufacturer, in relation to elements E or F of the Australian content percentage formula in new Section 5A, or where the

Comptroller-General forms the opinion that such a cost is incorrect or underestimated, the Comptroller-General may determine that cost. Such determinations are once again reviewable by the Administrative Appeals Tribunal (new sub-section 22(2)).

Rates of bounty

New Section 14D

This section specifies the rates at which bounty is to be payable during the 3 year extension period effected by this Act, as follows:

- (proposed new sub-section (1)) where assembly of the vehicle is completed
 - .. during 1986 - 16%
 - .. during 1987 - 12%
 - .. during 1988 - 8%
- bounty is payable at the prescribed rate, on an amount equal to the sum of the into-store costs to the assembler of the bountiable vehicle of any prescribed components used in the assembly of that vehicle (proposed new sub-sections (1) and (3))
- bounty is not payable on a prescribed component used in the assembly of a bountiable vehicle where the Australian content percentage of that component is less than 65% (proposed new sub-section (2))

Availability of bounty

New Section 14E

This section provides the method of payment of bounty where the Comptroller-General is of the opinion that the amount available for payment of bounty in a given year will be insufficient to meet all valid claims in that year. Sub-section (2) provides that if funds have not been appropriated by the Parliament for the purposes of the bounty in a financial year, then bounty is not payable to a person in that year.

Good quality of bountiable vehicles

New Section 14F

This section provides that a vehicle is to be of good and merchantable quality to be eligible for the payment of bounty:

- where the Comptroller-General declares in writing that, in his or her opinion, the vehicle is not of such quality, bounty is not payable in respect of that vehicle. That declaration is reviewable by the Administrative Appeals Tribunal (paragraph 22(1)(k)).

Advances on account of bounty

New Section 14G

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

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

Claims for payment of bounty

New Section 14H

This section sets out the procedures to be followed in claiming bounty:

- a claimant is required to (sub-section (2)):
 - (a) lodge a claim for bounty on an approved form, providing such information as is and such estimates as are, required by the form,
 - (b) set out particulars of the costs to the assembler of the vehicle of each kind of component used in the assembly of the vehicle;

- (c) set out particulars of the Australian content percentage of each kind of component used in the assembly of the vehicle;
- (d) sign and witness the form as required, and
- (e) lodge the form with a Collector for a State or Territory or the Comptroller-General within 12 months after the day on which the assembly of the vehicle was completed;

- the Comptroller-General is then obliged to examine the claim and either (sub-section (3)):

- (a) approve the payment of bounty in respect of the vehicle to which the claim relates, or,
- (b) refuse to approve such payment;
- (c) the above decisions of the Comptroller-General are reviewable by the Administrative Appeals Tribunal (paragraphs 22(1)(m) and (n));

Variation of inadequate claims

New Section 14J

This section provides a mechanism for the variation of claims for the payment of bounty where the claimant considers that, by reason of inadvertent error, the original claim is less than the claimant's entitlement (sub-section (1)):

- the procedure for the lodgement of a subsequent claim for the balance of bounty which is considered to be owing is identical to the procedures that apply to original claims for bounty (see sub-section 14H(2) (sub-section (2));
- again, similar to the procedures that apply to original claims for bounty, (see sub-section 14H(3)), the Comptroller-General is obliged to examine the further claim for bounty and either approve or refuse the further payment of bounty (sub-section (3)):

.. The above decisions of the Comptroller-General are reviewable by the Administrative Appeals Tribunal (paragraphs 22(1)(p) and (q)),

- the Comptroller-General is obliged to furnish the claimant with a notice in writing setting out the decision where there is a delay in the processing of the claim or the claim is unsuccessful (sub-section (5));

Variation of excessive claims

New Section 14K

This section imposes an obligation on a recipient of bounty to lodge an acknowledgement of error, within 28 days, where the recipient becomes aware that the original claim for bounty exceeds by more than \$100 the claimant's entitlement (sub-section (1)):

- the penalty for contravening sub-section (1) is \$1,000,
- the procedure for the lodgement of an acknowledgement form is similar to that governing original claims (see sub-section 14H(2)) (sub-section (2)),
- upon examination of the acknowledgement, where the Comptroller-General is satisfied there has been an overpayment by more than \$100, he shall cause to be served on the claimant a demand for the total repayment of the amount of the overpayment (sub-section (4)):

.. the decision of the Comptroller-General for the above purposes is reviewable by the Administrative Appeals Tribunal (paragraph 22(1)(r)).

Other adjustments of claims

New Section 14L

This section provides that the Comptroller-General shall serve a demand for repayment of the total overpayment of a claim for bounty in excess of \$100, where the Comptroller-General discovers such an overpayment in a situation other than through an acknowledgement under Section 14K:

- the decision of the Comptroller-General is reviewable by the Administrative Appeals Tribunal (paragraph 22(1)(s)).

Recovery of repayments

New Section 14M

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

- a person claims bounty by way of an advance which is not or does not become payable to him (Section 14G), a person has overclaimed for bounty (Section 14K), or the Comptroller-General discovers an overpayment of bounty (Section 14L) (sub-section (1));
- amounts owing to the Commonwealth by a person in any of the situations described in sub-section (1) may be deducted from any amount that is payable to that person under the Act, and where such a deduction is made, the balance which is paid will be deemed to have been the full amount (sub-section (2)).

Registration of premises

New Section 14N

This section sets out the requirements for the registration of premises under the Act. A pre-requisite for the payment of bounty under the Act is that the bountiable vehicle be assembled at prescribed premises (see section 7):

- registrable premises are restricted to premises that are used solely or principally for industrial or commercial purposes (sub-section (1));
- applications for the registration of premises are to be made to the Comptroller-General in writing (sub-section (2));
- ... the Comptroller-General may require an applicant for registration to furnish such further information as he or she considers necessary and may refuse registration until such further information is provided (sub-section (7));

- on receipt of an application for registration, the Comptroller-General shall either (sub-section (3)):
 - .. register the premises and cause a notice to that effect to be served on the applicant; or
 - .. refuse to register the premises and cause a notice to that effect to be served on the applicant;
- where premises are registered, the registration shall date from the day the Notice of Registration is signed by the Comptroller-General or such earlier date as is specified in the Notice not being a day earlier than 1 January 1986 (sub-section 4);
- regulations may prescribe conditions to be complied with in connection with the production of bountiable vehicles at registered premises (sub-section (5)):
 - .. if the conditions prescribed are not or will not be complied with the Comptroller-General shall not register the premises (sub-section (6));
- the registration of premises which were not engaged in the production of bountiable vehicles prior to 31 December 1985 (the day of the expiry of the current bounty arrangements) will be permitted unless the Minister informs the Comptroller-General that the registration of the premises will not permit the orderly development in Australia of the industry that is concerned with the assembly of bountiable vehicles (sub-section (8));
- regulations may prescribe conditions to be met by an applicant for the registration of premises (sub-section 9);
 - .. if the conditions prescribed are not or will not be complied with, the Comptroller-General shall not register the premises (sub-section (10));

- registrations may be transferred on the submission of a joint application to the Comptroller-General and shall take effect not earlier than 6 months before the day on which the application for the transfer was made (sub-sections (12) and (13));

- the Comptroller-General may cancel the registration of premises where he or she becomes satisfied that any one of the following applies (sub-section (14)):

- (a) bountiable vehicles are not being assembled at the premises;
- (b) the assembly of bountiable vehicles is being carried on by someone other than the person in whose name the premises are registered;
- (c) the assembly is not being carried out in accordance with prescribed conditions; or
- (d) the premises are not being used solely or principally for industrial or commercial purposes;

- decisions of the Comptroller-General refusing the registration of premises (sub-section (3)), or cancelling the registration of premises (sub-section (14)) are reviewable by the Administrative Appeals Tribunal (paragraph 22(1)(t) and (u)).

Accounts relating to bountiable vehicles

New Section 14P

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

- kept in writing in the English language (or be readily accessible and convertible into writing in the English language (sub-section (2)); and
- retained for at least 3 years after the date of lodgement of a claim for bounty pursuant to Section 14H (sub-section (1)).

Securities relating to bountiable vehicles

New Section 14Q

This section confers upon the Comptroller-General the power to require a person to whom bounty could become payable to give security for compliance with the Act and regulations. Payment of bounty may be withheld until the required security is given:

- a decision of the Comptroller-General requiring a person to give a security is reviewable by the Administrative Appeals Tribunal (paragraph 22(1)(v)).

PART IV - ADMINISTRATION

Appointment of authorised officers

New Section 15

This section replaces Section 15 of the Principal Act and substitutes a new Section 15 which;

- empowers the Comptroller-General to appoint authorised officers upon whom certain administrative functions can be conferred for the purposes of the Act (sub-section (1) and (2))

Sub-clause 8(2) is a transitional provision, which deems authorised persons under the Principal Act immediately prior to the commencement of this Act, to be authorised officers for the purposes of this Act.

Offences

Clause 9 amends Section 19 of the Principal Act by omitting sub-sections (2), (3) and (4) and substituting new sub-sections which;

- create offences for;
 - .. obtaining or attempting to obtain bounty that is not payable, which is to be liable to a penalty of \$2,000 or imprisonment for 12 months, or both (sub-section (2));

.. the making of false or misleading statements, or the presentation of certain records, that are known to be false or misleading in a material particular. Both situations are to be liable to a penalty of \$1,000 or 6 months imprisonment, or both (sub-section (3)).

Clause 10 introduces two new sections into the Principal Act, as follows:

Time for prosecutions

New Section 19A

This section limits the commencement of prosecutions for offences against the Act to within 3 years after the commission of an offence.

Recovery of bounty on conviction

New Section 19B

This section empowers a court to order a person convicted of an offence under sub-sections 14K(1) or 19(2) or (3) to refund to the Commonwealth the amount of bounty wrongfully obtained, in addition to imposing the penalty prescribed in sub-sections 19(2) or (3) against that person (sub-section (1));

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

PART V - MISCELLANEOUS

Return to Parliament

Clause 11 effects minor technical drafting changes to Section 20 of the Principal Act.

Application for Review

Clause 12 amends Section 22 of the Principal Act (relating to those situations under the Act which are reviewable by the Administrative Appeals Tribunal) by the addition of a further 10 areas for review. All of these relate to the new administrative provisions inserted into the Principal Act in Part III.

Statement to accompany notice of decisions

- Clause 13 inserts a new section 22A, which requires persons whose interests are affected by an administrative decision of a kind referred to in section 22 to be notified of the rights of review of those decisions by the Administrative Appeals Tribunal.
- Clause 14 repeals Sections 23 and 24 of the Principal Act and substitutes 2 new sections as follows:

Appropriation

New Section 23

This section provides for payments of bounty and advances on account of bounty, in respect of vehicles the assembly of which is completed on or after 1 January 1986, to be made out of money appropriated by the Parliament.

Regulations

New Section 24

This section provides the power to make regulations for the purposes of the Act.

Minor Amendments

- Clause 15 effects minor drafting amendments to various sections of the Principal Act, by way of a Schedule.