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1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

BOUNTY (TEXTILE YARNS) AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

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

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



## BOUNTY (TEXTILE YARNS) AMENDMENT BILL 1990

### OUTLINE

This Bill proposes to amend the Bounty (Textile Yarns) Act 1981 to provide persons currently eligible for bounty assistance under the Act with an alternative assistance scheme in the form of a once-off capitalisation grant paid in lieu of possible future bounty receipts.

The Bill gives effect to the Government's decision announced on 30 January 1990 to introduce an alternative assistance scheme for textile yarn producers which provides an opportunity for accelerated restructuring in their industry, while at the same time generating net reductions in budgetary outlays by the Commonwealth.

The main features of the proposed capitalisation grant provisions are contained in the 11 new sections proposed in Clause 10 of the Bill, and the amendment to the bounty eligibility provision in Clause 9 of the Bill, as follows:

#### Clause 10;

- . a person who is a producer of bountiable textile yarn, or likely to become a producer of bountiable yarn, may apply for a capitalisation grant (section 21A);
- . all applications must be made to the Textiles, Clothing and Footwear Authority, and must include a business plan outlining the applicant's business objectives in relation to the production in Australia of bountiable yarn and other TCF products and export initiatives in relation to such products, and the applicant's plans for achieving those objectives on a yearly basis against certain specified criteria. The application must also include an estimate of the grant sought to enable implementation of the business plan (section 21B);
- . the Authority must consider all applications as soon as practicable after receipt and must report to the Minister recommending whether a capitalisation grant should be made, and the amount of the grant, having regard to;
  - i) the financial viability of the business plan,
  - ii) whether or not the business plan is consistent with the objectives of the TCF plan,
  - iii) whether or not the making of the grant would be likely to result in a lesser budgetary outlay by the Commonwealth than the outlay required if the applicant had continued to claim bounty in respect of bountiable yarn produced without the benefits of a capitalisation grant, and

- iv) whether or not the making of the grant is consistent with Australia's international trade obligations (section 21C);
- . the Minister must, after considering a report of the Authority, decide whether or not a grant should be made to the applicant (section 21E);
- . where the Minister decides to offer a grant, the Minister must advise the applicant accordingly, providing a broad statement of the recommendation of the Authority. The offer is subject to the applicant entering into a capitalisation agreement with the Authority on behalf of the Commonwealth. The Agreement may be subject to such terms and conditions as the Minister thinks appropriate for achieving the objectives of the business plan (subsections 21E(1) and 21F(1));
- failure to meet the terms and conditions included in a capitalisation agreement will, on demand, render the total grant repayable to the Commonwealth (subsection 21F(5));
- . a person who accepts the offer of a capitalisation grant becomes ineligible to receive bounty in respect of any textile yarn produced on or after the day on which the grant is made (section 21J); and

#### Clause 9;

- . any person who subsequently acquires the assets the subject of a grant (eg. identified as essential to achieving the nominated objectives of a grant recipient's business plan (subsection 21F(2)) is ineligible to claim bounty on production generated by those assets (new paragraph 5(5)(ba)).

#### Financial Impact Statement

Under current textile yarn bounty arrangements, Commonwealth outlays between 1 July 1990 and 30 June 1995 are estimated in present dollar values on a financial year basis as follows:

\$85.96 million for 1990-91;  
 \$83.04 million for 1991-92;  
 \$81.13 million for 1992-93;  
 \$76.67 million for 1993-94;  
 and \$74.14 million for 1994-95.  
total \$400.94 million.

The capitalisation grant scheme proposed in this Bill as an alternative assistance scheme to yarn producers in lieu of future bounty receipts, is conditional in each instance upon there being a lesser outlay by the Commonwealth than the outlay required if the applicant had continued to claim bounty in respect of bountiable yarn produced without the benefits of a capitalisation grant. The extent of potential outlay reductions as a result of the new grant scheme will depend however, on the number of firms that apply and are approved, and the nature and timing of their proposals.

BOUNTY (TEXTILE YARNS) AMENDMENT BILL 1990

NOTES ON CLAUSES

Short title etc.

- Clause 1 provides for the Act to be cited as the Bounty (Textile Yarns) Amendment Act 1990 (subclause (1));
- Subclause (2) is a standard machinery provision which provides that the "Principal Act" referred to in this Act is the Bounty (Textile Yarns) Act 1981.

Commencement

- Clause 2 provides for the Act to commence on the day on which it receives the Royal Assent.

Title

- Clause 3 provides for the amendment of the long title of the Principal Act, as a consequence of the proposed introduction of the capitalisation grant scheme in proposed new Part 3 (see Clause 9).

Insertion of new Part heading

- Clause 4 inserts a new Part heading before section 1 of the Principal Act, to restructure the Act as a consequence of the inclusion of the new provisions relating to capitalisation grants;

The revised structure of the Act is as follows:

Part 1 - PRELIMINARY

- comprising existing sections 1, 1A, 2, 3, 3AA, and 3A.

Part 2 - BOUNTIES

- comprising existing sections 4, 5, 6, 7, 8, 9, 10, 10A, 10B, 10BA, 10BB, 10C, 10D, 10E, 11, 12, 13, 14, 15, 16, 17, 18, 18A, 18B, 19 and 21.

Part 3 - CAPITALISATION GRANTS

- comprising new sections 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21J, 21K and 21L.

Part 4 - MISCELLANEOUS

- comprising existing sections 22 and 23.

- . the provisions contained in Part 3 are the new provisions relating to capitalisation grants. Generally speaking, all other amendments are amendments to existing provisions consequential upon those.

PART 1 - PRELIMINARY

Short title etc.

Clause 5 amends section 1 of the Principal Act to reflect the added substantive function of the Principal Act; eg. the payment of Capitalisation Grants in lieu of bounty.

General administration of Act

Clause 6 amends section 1A of the Principal Act to limit the administrative responsibility of the Comptroller-General of Customs ("the Comptroller") to all parts of the Principal Act, except Part 3, which contains the new capitalisation grant provisions;

- . as provided for in the new Part 3 provisions, applications for capitalisation grants must be made to the Textiles, Clothing and Footwear Development Authority, which must then consider the applications and recommend to the Minister whether or not a grant should be made. Where grants are made and capitalisation agreements entered into, the Authority will monitor the agreements.
- The Authority, which was established in 1988 under the Textiles, Clothing and Footwear Development Authority Act 1988, has been chosen to perform the above functions as a result of its overall responsibility for the Textile, Clothing and Footwear Plan, and with due regard to its role as an independent source of specialist advice on the TCF industries.

Interpretation

Clause 7 defines several words and expressions for the purposes of the capitalisation grant provisions contained in the new Part 3 of the Principal Act.

"Authority" is defined to mean the Textiles, Clothing and Footwear Development Authority established by section 5 of the Textiles, Clothing and Footwear Development Authority Act 1988;

"capitalisation grant" is defined to mean a grant made by the Minister under section 21E, contained in the new Part 3.

"TCF Industries" is defined to have the same meaning as in the Textiles, Clothing and Footwear Development Authority Act 1988, that is,

- . industries in Australia concerned with the development, production, distribution or sale of TCF products.

"TCF products" is defined to have the same meaning as in the Textiles, Clothing and Footwear Development Authority Act 1988, that is,

- . textile, clothing and footwear products, and materials (other than raw materials) used in the production of those products.

#### Insertion of new Part heading

Clause 8 inserts a new Part heading into the Principal Act, consistent with the restructuring required by the insertion of the new provisions concerning capitalisation grants contained in the new Part 3;

Under the new structure of the Act, existing sections 4 to 21, which are the provisions relating to bounty for textile yarns, are to be contained in new "PART 2 - BOUNTIES";

- . the rationale for the restructuring is set out in the notes to Clause 4 (above).

#### Specification of bounty

Clause 9 amends Section 5 of the Principal Act, relating to bounty eligibility, to expressly provide an additional pre-condition for bounty under the Act, which is consequential on the new Capitalisation Grant provisions (Part 3), and, in particular, new Section 21J relating to the disentitlement from bounty for those who receive capitalisation grants new paragraph 5(5)(ba).

- . provides that a producer is not entitled to receive a payment of bounty in respect of bountiable yarn unless the production was carried out, in its entirety, using assets that are not identified as being essential to achieving the objectives of the applicant's business plan (pursuant to new subsection 21F(2), Clause 10 refers) and which are included in an assets register established and maintained by the TCFDA (new section 21G) Clause 10 refers).

- This disentitlement will ensure that the benefits of capitalisation in terms of budgetary savings from bounty

foregone are not lost to the Commonwealth simply because essential production capacity of one the subject of a grant is sold or otherwise transferred to another who is not.

Insertion of new Part and Part Heading

Clause 10                inserts a new Part and Part heading into the Principal Act.

The new Part 3, containing the new provisions relating to capitalisation grants, comprises eleven new sections, as follows:

- s21A -        Persons may make application for capitalisation grants
- s21B -        Nature of application
- s21C -        Consideration of applications by Authority
- s21D -        Assessment of financial viability of business plans
- s21E -        Minister to consider report
- s21F -        Capitalisation agreements
- s21G -        Identified assets register
- s21H -        Decisions to be made public
- s21J -        Recipients of capitalisation grants not entitled to bounty
- s21K -        Offences in relation to grant application
- s21L -        Recovery of grant on conviction

The main features of the new capitalisation grant provisions are:

- .        a person who is a producer of bountiable textile yarn, or likely to become a producer of bountiable yarn, may apply for a capitalisation grant (section 21A);
- .        all applications must be made to the Textiles, Clothing and Footwear Authority, and must include a business plan outlining the applicant's business objectives in relation to the production in Australia of bountiable yarn and other TCF products and export initiatives in relation to such products, and the applicant's plans for achieving those objectives on a yearly basis against certain specified criteria. The application must also include an estimate of the grant sought to enable implementation of the business plan (section 21B),
- .        the Authority must consider all applications as soon as practicable after receipt and must report to the Minister recommending whether a capitalisation grant should be made, and the amount of the grant, having regard to;



- i) the financial viability of the business plan,
- ii) whether or not the business plan is consistent with the objectives of the TCF plan,
- iii) whether or not the making of the grant would be likely to result in a lesser budgetary outlay by the Commonwealth than the outlay required if the applicant had continued to claim bounty in respect of bountiable yarn produced without the benefits of a capitalisation grant, and
- iv) whether or not the making of the grant is consistent with Australia's international trade obligations.  
(section 21C);

- . the Minister must, after considering a report of the Authority, decide whether or not a grant should be made to the applicant (section 21E);
- . where the Minister decides to offer a grant, the Minister must advise the applicant accordingly, providing a broad statement of the recommendation of the Authority. The offer is subject to the applicant entering into a capitalisation agreement with the Authority on behalf of the Commonwealth. The Agreement may be subject to such terms and conditions as the Minister thinks appropriate for achieving the objectives of the business plan (subsections 21E(1) and 21F(1));
- failure to meet the terms and conditions included in a capitalisation agreement will, on demand, render the total grant repayable to the Commonwealth (subsection 21F(5));
- . a person who accepts the offer of a capitalisation grant becomes ineligible to receive bounty in respect of any textile yarn produced after the day on which the grant is made (section 21J) and, any person who subsequently acquires the essential assets identified in the capitalisation agreement and included in the assets register (section 21G) is ineligible to claim bounty on production from those assets (paragraph 5(5)(ba), Clause 9 refers).

### Part 3 - CAPITALISATION GRANTS

#### Persons may make application for capitalisation grants

new s21A provides that a person who is, or is likely to become, during the bounty period (eg. until 30 June 1995) a producer of bountiable yarn in Australia may make application to the Minister for a capitalisation grant.

- While eligibility to apply for a grant is not restricted to current producers of

bountiable yarn, when considering applications the Authority must have regard to whether a grant would be likely to result in a lesser budgetary outlay by the Commonwealth than the outlay required if the applicant had continued to claim bounty under the Act in respect of the production of bountiable yarn. A non-producer applicant will therefore have no grounds on which to base a grant claim unless he or she can provide substantial evidence of future production capacity, and the means of achieving such capacity.

- . the production capacity of the applicant (that is, the plant, equipment etc.) may also be the subject of conditions included in a capitalisation agreement for the purpose of protecting the Commonwealth's interest; (new subsection 21F(1))

#### Nature of application

new s21B sets out the details which an applicant must include in an application under new section 21A.

An application must:

- be made in writing, and be lodged with the Authority after the commencement of this Act (the date of Royal Assent) and before the end of the bounty period (or such lesser period as may be prescribed by regulation); (new paragraphs 1(a) and (b));
- . "bounty period" is currently defined in the Principal Act as extending until 30 June 1995;
- . It was anticipated in the Government's announcement of this scheme on 30 January 1990 that applications for capitalisation grants would be made, and the grants would be available, within the first 2 years of the scheme. Hence, the facility to prescribe an earlier date of termination to enable the capitalisation scheme to be brought to an end in circumstances where, for example, most of the 140 producers of bountiable yarn have availed themselves of the opportunity to seek a capitalisation grant;
- include details of any bounty payments that the applicant has received, or is likely to receive, or any advances on account of bounty received or applied for in respect of

bountiable yarn produced before the day the application is made, and an estimate of the amount of bounty the applicant would be likely to receive in respect of bountiable yarn produced on or after the day the application is made (new paragraphs (1)(c), (d) and (e));

- . this information is required so that the Authority might estimate the amount of a capitalisation grant (if any) to recommend to the Minister, against the substantive pre-condition that a grant must, in the Authority's opinion, result in a lesser budgetary outlay by the Commonwealth than the outlay required if the applicant had continued to claim bounty in respect of bountiable yarn produced without the benefits of a capitalisation grant (see new paragraph 21C(2)(a));
- . the Authority may verify any figures supplied in relation to the above, or obtain further information relating to the above, or any other TCF products produced in Australia by the applicant, by a request in writing to the Comptroller-General of Customs (see new subsection 21C(5));
- include a business plan setting out the applicant's business objectives (new paragraph (1)(f));
- . the matters which the applicant must address in his or her business plan are set out in new subsection (2);
- include an estimate of the grant sought to enable implementation of the applicant's business plan, indicating the date from which the grant is sought and the manner of its application (new paragraph (1)(g)); and
- include such other information as may be prescribed by regulation; (new paragraph (1)(h));
- . at present, no regulations are contemplated to add to the list of matters which the applicant must address in his or her application. However this regulation facility will enable further matters to be added if and when they are identified by the Authority in the course of receiving and considering grant applications;

Subsection (2) sets out the details which an applicant must address in a business plan lodged in accordance with paragraph (1)(f). It is to enable the implementation of the business plan that the applicant seeks a grant (paragraph (1)(g)), and it is the business plan which the Authority must assess in making its recommendatory report to the Minister on the amount, if any, of a capitalisation grant (see new section 21C);

The applicant must include in the business plan his or her:

- business objectives in relation to the production in Australia of bountiable yarn (paragraph (2)(a));
- business objectives in relation to the production in Australia of any other TCF products (paragraph (2)(b));
  - . "TCF products" is defined in Clause 7;
- business objectives in relation to export initiatives of any TCF products produced in Australia; eg. the products detailed in paragraphs (a) and (b) (paragraph (2)(c)); and
- plans for achieving the objectives referred to in paragraphs (2)(a), (b) and (c), in terms of:
  - . organisational restructuring;
  - . investment (including investment in plant, equipment and manufacturing systems);
  - . research and development (both within and outside Australia);
  - . erection of purpose-built buildings;
  - . debt and equity financing;
  - . sales and marketing; and
  - . any other matters the applicant considers likely to assist in meeting those objectives; (paragraph (2)(d));
- The above objectives, and plans for achieving same, must be detailed in the business plan for each financial year or part thereof, from the date of application until the current end of the bounty period (30 June 1995).

Consideration of applications by Authority

new s21C

sets out the role of the Authority in considering applications for capitalisation grants, and its recommendatory function vis a vis the Minister in terms of its report on whether the grant applied for should be made or whether a grant for a lesser amount than applied for should be made.

The Authority must consider each application as soon as practicable after it is received, and must make a report to the Minister recommending what grant (if any) should be offered to the applicant, including the reasons for its recommendation (subsection (1));

- . Clause 12 of the Bill makes a consequential amendment to section 7 of the Textiles, Clothing and Footwear Development Authority Act 1988, amplifying the Authority's statutory functions to expressly include the functions proposed in relation to capitalisation grants under the Bounty (Textile Yarns) Act 1981.

Subsection (2) provides that, in preparing its report, the Authority must have regard to the following matters:

- . whether the grant sought, or any lesser amount, would, in the opinion of the Authority, be likely to result in a lesser budgetary outlay by the Commonwealth (on a net present value basis) than the outlay required if the applicant had continued to claim bounty in respect of bountiable yarn produced without the benefits of a grant (paragraph (2)(a));
  - The quantum of the capitalisation grant is dependent on, and must be less than, a producer's bounty entitlement under the Act, which is determined without the benefits of a Capitalisation grant.
  - Thus, a current producer cannot calculate the grant sought on the basis of what he or she might produce once he or she receives the money. While information concerning the purpose of the grant is indeed required both to cost and condition the grant (paragraph 21B(1)(g) and subsection 21F(1)), the ceiling on the quantum of a possible grant is dependent solely on one's bounty entitlement had the person continued to claim bounty without the benefits of a capitalisation grant.

- Similarly, a new player, while he or she might apply for a grant (new section 21A), cannot receive one until he or she becomes a producer and claims bounty under the Act.

This is because where one has no entitlement under the Act, the Authority cannot satisfy itself as required in paragraph (2)(a) that but for the grant the applicant would have continued to claim bounty, and the bounty claims would have exceeded the amount proposed for the grant.

- . whether, in the opinion of the Authority, the business plan provided in support of the application is financially viable (paragraph (2)(b));
  - new section 21D provides that the Authority may, if it considers it necessary, refer a business plan to a suitably qualified person for an assessment of the plan's financial viability;
- . whether, in the opinion of the Authority, the business plan provided in support of the application is consistent with the objects of the TCF plan; eg. whether the business plan will promote the restructuring and revitalisation of the TCF industries so as to improve their efficiency and international competitiveness and whether the business plan will reduce the dependence of those industries on assistance by the Commonwealth (paragraph (2)(c)); and
- . whether, in the opinion of the Authority, the making of the grant accords with Australia's international trade obligations (paragraph (2)(d));
  - in particular, the Authority will have regard to Australia's obligations under the ANZCERTA agreement with New Zealand.

Subsection (3) empowers the Authority to seek in writing further information from an applicant for a capitalisation grant, and subsection (4) provides that if the applicant refuses or fails to comply with the request without reasonable excuse, the application is to be taken to have been withdrawn;

Subsection (5) provides a power for the Authority to seek information from the Comptroller in respect of payments, or likely payments, of bounty or advances on account of bounty in respect of TCF products produced in Australia by the applicant. As discussed in the notes on new Section 21B (paragraphs (1)(c,d and e), this power will enable the Authority to verify information provided to it by the applicant.

Assessment of financial viability of business plans

new s21D provides that the Authority may, if it considers it necessary, refer a business plan submitted by an applicant for a capitalisation grant to a suitably qualified person for an assessment of the plan's financial viability;

- . paragraph 21C(2)(b) provides that, in making a report to the Minister, the Authority shall have regard to whether the business plan provided in support of the application is financially viable;
- . The provision for referral to an independent financial expert is similar to Sections 32 and 38 of the Textile, Clothing and Footwear Development Authority Act 1988.
- . Information such as this, which might be provided to the Authority on a confidential basis, is expressly protected from disclosure (see paragraph 21H(3)(a)).

Minister to consider report

new s21E provides that the Minister must consider the report of the Authority, and must make a decision concerning whether a grant should be offered to the applicant.

Subsection (1) provides that after considering the Authority's report, the Minister must inform the applicant in writing;

- that the Minister is prepared to make a capitalisation grant, on a day specified in the notice, on the condition that the applicant enters into a capitalisation agreement with the Authority within a specified time prior to that specified day (paragraph (1)(a)); or
- that the Minister is not prepared to make a capitalisation grant (paragraph (1)(b));

Subsection (2) provides that the day specified in subsection (1) for the making of the grant shall be a day during the bounty period not earlier than the day the notice is given to the applicant;

- "bounty period" is currently defined in the Principal Act as extending until 30 June 1995.

Subsection (3) provides that in the notice given to the applicant pursuant to subsection (1) the Minister shall include a statement:

- setting out whether or not the Authority recommended that a grant be made, and if so, the amount of the grant that the Authority recommended; (paragraph (3)(a)); and
- providing a broad statement of the reasons for the Authority's recommendations subject to the Authority's "confidentiality obligation" to remove from the statement any matters that it feels might inhibit the provision of information on a confidential basis to the Authority, or might adversely affect the business or commercial interests of any person (paragraph (3)(b) and subsection 21H(3));

Subsection (4) provides that where a person has entered into a capitalisation agreement in accordance with the offer made by the Minister under subsection (1), then the person is entitled to a grant on the particular day specified by the Minister in the Notice;

Subsection (5) provides that where an applicant is offered a grant by the Minister and the applicant refuses or fails to enter into the requisite capitalisation agreement, the applicant shall be taken to have declined the grant.

#### Capitalisation agreements

##### new s21F

details the content of capitalisation agreements, including the terms and conditions which may be included in such agreements, and the remedy available where a grant recipient fails to meet such terms and conditions.

Subsection (1) provides that the capitalisation agreement entered into between the applicant and the Authority (on behalf of the Commonwealth) may include such terms and conditions in respect of the grant as the Minister thinks appropriate for achieving the objectives of the business plan;

Subsection (2) provides for a specific condition



which must be included in all capitalisation agreements. In accordance with this provision, the capitalisation agreement must identify those assets of the applicant (including assets proposed to be acquired) which are essential to achieving the objectives of the business plan;

Subsection (3) provides that such assets may not be sold, leased or otherwise dealt with without the agreement of the Minister or an authorised person, which must be sought via an application to either person.

- . it is intended to authorise the Authority to make decisions as an "authorised person";

Subsection (4) provides that the Minister or authorised person:

- may only approve the sale etc. of an "essential asset" where he or she is satisfied that the asset has, for any reason, ceased to be essential to achieving the objectives of the applicant's business plan, or, that the dealing is not likely to prejudice the achieving of those objectives;

- . this provision is intended to:

- prevent alienation of the "essential assets", where that alienation would prevent the recipient of the grant from meeting the nominated objectives of the business plan, the implementation of which was the purpose of the grant;
  - .. in this regard, the term "sold, leased or otherwise dealt with" is intended to cover any kind of alienation of the essential assets, including, but not limited to: sale; lease; mortgage; charge, deed; gift; loan etc.
- prevent the "essential assets" which have been "capitalised" (and are thus not eligible for bounty assistance; see section 21J) from passing into the hands of another bounty producer and being used to produce goods upon which bounty is subsequently claimed, such that the purpose of generating net reductions in yarn bounty outlays via the capitalisation agreement is thwarted.

- In granting approval for the sale, lease or other dealing of an "essential asset", the approval must be given absolutely or on such conditions as the Minister or authorised person thinks appropriate;

Subsection (5) provides that a capitalisation grant may become repayable if the grant recipient fails to meet any of the terms and conditions included in the capitalisation agreement made in accordance with subsection (1), or if the grant recipient sells etc. an "essential asset" (subsection (2)) otherwise than in accordance with the agreement of the Minister or authorised person, (subsection (4))

- . where an applicant fails to comply with any of the terms and conditions of a capitalisation agreement or fails to observe the "essential asset" limitation, (paragraph (5)(a)) and the Minister makes a demand in writing for the repayment of the capitalisation grant within 90 days (paragraph (5)(b)), and the applicant fails to repay the grant within the 90 days (paragraph (5)(c)), the amount of the grant becomes a debt due to the Commonwealth.

Subsection (6) extends the obligations on the applicant vis a vis the sale etc. of the applicant's essential assets to any person who has control of the applicant's business affairs;

- . this provision is intended to cover the situation where, for example, a receiver or manager has been appointed to take control of the day-to-day running of the applicant's business.

#### Identified assets register

##### new s21G

provides that as part of the Textile Clothing and Footwear Development Authority's administrative responsibilities under the capitalisation grants scheme, it must maintain a public register of all those assets which are identified as being essential to achieving the objectives of a grant applicant's business plan in the capitalisation agreement entered into between the applicant and the Authority (on behalf of the Commonwealth (subsection 21F(2)))

- . The Authority is required to place on the register sufficient particulars of each asset which is nominated in a capitalisation agreement as essential to achieving the

objectives of a business plan, so that the asset might be readily identified by any prospective purchaser (subsection (2));

- . The register is to be made available for inspection by the public during normal business hours (subsection (3))
- . This provision is a corollary to the new restriction on eligibility to claim bounty under the Act (Clause 9 refers). It is intended to provide prospective purchasers of assets with notice that those assets listed in the register are encumbered to the extent that production of yarn from those assets is not eligible for a payment of bounty under the Act.

#### Decisions to be made public

new s21H provides for decisions concerning the approval or refusal of capitalisation grants to be made public, similar to Section 28 of the Anti-Dumping Authority Act 1988, No. 72 of 1988.

Subsection (1) provides that, as soon as possible after an applicant

- enters into a capitalisation agreement (paragraph(a));
- is taken to have declined a grant (paragraph(b)) (pursuant to subsection 21E(5)); or
- is refused a grant (paragraph(c));

the Authority must publish in the Gazette a statement informing the public of the grant sought and of the grant made or refused, as the case may be.

- . it is intended that the statement to be published in the Gazette will simply contain sufficient detail (for example, the name of the applicant and the relevant amounts) to alert the public to the existence of the grant or the refusal to make the grant, as the case requires;

Subsection (2) enables the public, having been alerted of the making of the decision via the Gazette notice published in accordance with subsection (1), to seek fuller details from the Authority, of the recommendation that was made by the Authority to the Minister, including a broad statement of the reasons for the recommendation,

Subsection (3) provides that in giving a statement of the reasons for a recommendation, the Authority must remove from the statement any matters that might:

- inhibit the provision of information on a confidential basis to the Authority (for instance, the assessment of the financial viability of the business plan which might have been provided by an independent financial advisor pursuant to Section 21D) (paragraph (3)(a)); or
- adversely affect the business or commercial interests of any person (paragraph (3)(b)).

Recipients of capitalisation grants not entitled to bounty

new s21J provides that recipients of capitalisation grants will no longer be entitled to receive bounty assistance under the Act.

This provision in effect disentitles current bounty recipients from further assistance under the Act, from the day on which a grant is made (subsection (1));

- the disentitlement is in respect of the production of bountiable yarn on or after the day on which the grant is made; there is no disentitlement (for bounty or advance on account of bounty) in respect of production or anticipated production prior to the day a grant is made;
- the disentitlement provision effectively qualifies the grant scheme as an alternative assistance facility for textile yarn producers; it gives producers the alternative of continuing under the present textile yarn bounty assistance arrangements or opting for a one-off up-front grant in lieu of continued yarn bounty entitlements.

Offences in relation to grant application

new s21K creates offences for:

- knowingly or recklessly making statements, orally or in writing, that are false or misleading in a material particular, or presenting an account, book, document, or other record that is false or misleading in a material particular (subsection (1));

- penalty, \$3,000 or imprisonment for 6 months, or both (natural person), or \$15,000 (body corporate). The maximum corporate pecuniary penalty of 5 times the natural person penalty is provided pursuant to subsection 4B(3) of the Crimes Act 1914.
- . Where, in proceedings for an offence against subsection (1),
  - 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 (subsection (2));
  - 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 (subsection (3));
- . A reference in subsection (2) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person, and the person's reasons for the intention, opinion, belief or purpose (subsection (4)).
- . These offences and penalties are standard for false or misleading statements or documents in most recent Bounty and Subsidy legislation (see for instance, subsection 25(3) of the Bounty (Ships) Act 1989 No. 69 of 1989).

#### Recovery of grant on conviction

##### new s21L

empowers a court to order a person convicted of an offence under subsection 21J(1) to refund to the Commonwealth the amount of the grant made to that person, in addition to imposing the penalty prescribed in that sub-section against that person (subsection (1));

Subsections (2) to (6) provide a procedure to ensure that grants to be recovered under subsection (1) do not fail to be recovered due to jurisdiction difficulties.

Clause 10 also inserts a new Part heading into the Principal Act, consistent with the restructuring required by the insertion of the new provisions concerning capitalisation grants contained in the new Part 3;

Under the new structure of the Act, existing sections 22 and 23, which are the provisions relating to Appropriations and Regulations respectively, are to be contained in new "Part 4 - MISCELLANEOUS".

- . the rationale for the restructuring is set out in the notes to Clause 4 (above).

#### Part 4 - MISCELLANEOUS

##### Appropriations

- Clause 11 amends section 22 of the Principal Act to expand the annual appropriation provision for the purpose of expenditure authorised by the Act from the present appropriation in relation to "bounty" (including advances on account of bounty) to now include capitalisation grants under new Part 3.

##### Consequential Amendment

- Clause 12 amends section 7 of the Textiles, Clothing and Footwear Development Authority Act 1988 to extend the Authority's functions to include the new functions under Part 3 of the Bounty (Textile Yarns) Act 1981, eg.
- . that of reporting to the Minister in relation to capitalisation grant applications and entering into capitalisation agreements on behalf of the Commonwealth, and
  - . that of establishing and maintaining an assets register in accordance with new section 21G.

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