

1995

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INTERNATIONAL SHIPPING (AUSTRALIAN-RESIDENT SEAFARERS)
GRANTS BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister for Transport,
the Honourable Laurie Brereton MP)

**INTERNATIONAL SHIPPING (AUSTRALIAN-RESIDENT SEAFARERS)
GRANTS BILL 1995**

OUTLINE

Australian ship operators engaged in international shipping trades must compete with overseas operators which, over several years, typically have had access to low tax regimes and low cost crews.

This Bill will place Australian ship operators on a more equal footing with their overseas competitors in respect of crew costs and provide an incentive for the Australian shipping industry to develop new international trading opportunities.

The incentive provided by this Bill is in the form of a taxable grant payable to the employers of Australian seafarers on Australian-operated ships engaged in international trades.

The amount of grant in respect of each ship will be equal to the notional tax payable on the earnings of the seafarers serving on that ship.

Part 1 of the Bill sets out the short title and commencement date of the proposed Act.

Part 2 explains the expressions used in the proposed Act.

Part 3 sets out the eligibility criteria for the grant and how the grant is to be calculated.

To qualify for a grant in a relevant financial year, a ship must be Australian-operated, its crew must be employed by an Australian employer and the ship must spend not less than half its operational service during the year on international voyages.

The amount of grant payable in respect of a ship is based on the sum of the notional income tax liabilities of the Australian-resident seafarers employed on the ship during the year.

Part 4 sets out the processes for applying for a grant and for the Secretary of the Department to make a decision in respect of an application.

Part 5 contains miscellaneous provisions relating to the administration of the arrangements. This Part also contains provision for applicants to seek Administrative Appeals Tribunal review of disputed decisions.

FINANCIAL IMPACT STATEMENT

Currently, around 30 Australian-operated ships are engaged in international trades. On this basis the value of the grants payable in respect of the first year, 1995-96, will be \$19 million (payable in arrears in 1996-97). As the grants are taxable, around one third of this amount is expected to be recouped in 1997-98 (corporation tax payments are lagged a year).

For each additional ship entering international trades, the additional net after-tax cost of the grant would be around \$400,000 per annum.

Assuming one additional ship enters international trades from 1996-97 onwards, the budgetary cost of the legislation is estimated to be \$59 million in the 5 years to 30 June 2000.

No increase of staffing of the Department of Transport is expected as a result of this legislation.

INTERNATIONAL SHIPPING (AUSTRALIAN-RESIDENT SEAFARERS)
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PART 1 - PRELIMINARY

Clause 1: - Short title

This clause provides for the proposed Act to be cited as the *International Shipping (Australian-resident Seafarers) Grants Act 1995*.

Clause 2: - Commencement

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

PART 2 - EXPLANATION OF EXPRESSIONS USED IN THIS ACT

Clause 3 - Eligible ship

Subclause (1) defines an eligible ship to mean a commercial trading ship (defined in clause 7), which has a deadweight tonnage of 2,000 tonnes or more and is an Australian-operated ship (clause 4 defines the term Australian-operated ship). There is a further proviso in the case of passenger ships, which must have a cargo-carrying capacity of not less than 2,000 tonnes mass.

Subclause (2) provides that a Government ship, as defined in the *Navigation Act 1912*, is not an eligible ship.

Clause 4 - Australian-operated ship

This clause defines an Australian-operated ship for the purposes of the proposed Act.

Subclause (1) provides that an Australian-operated ship is a ship that:

- (a) is owned entirely by one or more Australian nationals;
or
- (b) is owned by 3 or more persons as joint owners, where the majority of those persons are Australian nationals; or
- (c) is owned by 2 or more persons as owners in common, where more than half the shares in the ship are owned by one or more Australian nationals; or
- (d) is on demise charter to:
 - one or more Australian nationals and to no other person; or

- 2 or more persons, including one or more Australian nationals, if the Australian national is, or the Australian nationals are, as the case may be, in a position to control the exercise of the rights and powers of the charterers under the charter-party.

Subclause (2) sets out rules for the purposes of paragraph (1)(c) for calculating the relative interests of each owner in the ship, if 2 or more persons are joint owners of a share or shares in a ship.

Subclause (3) provides that a reference to the ownership of a ship or shares in a ship includes a reference to beneficial ownership of the ship or those shares.

Clause 5 - Meaning of international voyage

This clause defines the meaning of an international voyage for the purposes of the proposed Act.

Subclause (1) establishes that an international voyage is one in which a ship travels between:

- (a) an Australian port and a port outside Australia; or
- (b) an Australian port and a place in the waters above the continental shelf of a country other than Australia; or
- (c) a port outside Australia and a place in the waters above the continental shelf of Australia; or
- (d) a place in the waters above the continental shelf of Australia and a place in the waters above the continental shelf of a country other than Australia; or
- (e) ports outside Australia; or
- (f) places beyond the continental shelf of Australia.

Subclause (2) provides that if, in the course of a voyage, a ship calls at one or more Australian ports, this of itself does not prevent the voyage being an international voyage.

Subclause (3) provides that, subject to subsection (4), any part of an international voyage in which a ship is carrying Australian coastal cargo is not taken into account for the purposes of this Act.

Subclause (4) provides that subsection (3) does not apply to a part of an international voyage if, during that part:

- (a) the mass of the international cargo exceeds the mass of the Australian coastal cargo; or

- (b) the volume of the international cargo exceeds the volume of the Australian coastal cargo.

Subclause (5) defines "Australian coastal cargo" and "international cargo" for the purposes of clause 5.

"Australian coastal cargo" means cargo loaded at a port in Australia, or at a place in the waters above the continental shelf of Australia, for discharge at another such port in Australia, or at a place in the waters above the continental shelf of Australia.

"International cargo" means cargo other than Australian coastal cargo.

The relationship between Australian coastal cargo and international cargo for the purpose of determining whether or not a voyage is an international voyage under subclauses (3) or (4) may be illustrated in an example.

A ship carrying international cargo destined for three Australian ports, discharges the first parcel of international cargo at the first Australian port, then loads an amount of Australian coastal cargo destined for the second Australian port of call.

The passage between the first and second Australian ports would not be an international voyage if the mass or volume of Australian coastal cargo on the ship during the passage exceeded the residual mass or volume of international cargo on board. However, if either the mass or volume of the Australian coastal cargo were less than the mass or volume of the international cargo on board, the ship would continue to be deemed on an international voyage.

Subclause (6) provides that, subject to subsection (7), a port in an external Territory is taken to be a port in Australia for the purposes of subsections (1) to (5).

Subclause (7) qualifies subsection (6), so that a port in an external Territory would not be a port in Australia if, because of a declaration under subsection 7(1) of the *Navigation Act 1912*, a voyage between the port in the external Territory and another port in Australia would not constitute a coasting trade voyage.

Clause 6 - When does a voyage on which cargo is carried begin and end?

This clause defines the beginning and end of a voyage in respect of a ship carrying cargo, or proceeding to a place to load cargo, for the purposes of the proposed Act.

Subclause (1) provides that a voyage begins:

- (a) when a ship first begins to load cargo to be carried on any part of the voyage; or

- (b) if a ship departs from a port or place without cargo in order to go to another port or place to load cargo, when the ship leaves the first mentioned port.

Subclause (2) provides that a voyage ends on completion of the unloading of the cargo carried on the ship.

(In instances of a ship proceeding on a voyage for purposes other than the carriage of cargo, eg. to undergo repairs, the beginning and end of the voyage would rely on the general meaning of the word "voyage", and thus mean the beginning and end of the actual sea passage.)

Clause 7 - General definitions

This clause contains the definitions of a number of words and terms used in the proposed Act. Important terms defined in this clause include:

"Australian national", which means an Australian citizen, an Australian body corporate or the Commonwealth, a State or Territory.

"Australian-resident seafarer", which means a seafarer who is, or but for being at sea would be, ordinarily resident in Australia. The grant is only payable in respect of seafarer berths occupied by Australian-resident seafarers.

"commercial trading ship", which means a ship used in relation to any business or commercial activity but excludes:

- (a) ships used for the provision of services to ships or shipping;
- (b) fishing vessels, inland waterways vessels, pleasure craft, off-shore industry vessels and off-shore industry mobile units; or
- (c) harbour craft.

"relevant year", which means a financial year commencing on or after 1 July 1995.

"salary", which is defined to include wages but not any payment that, under the regulations, is not to be taken into account as salary for the purposes of the Act. This will enable the regulations to exclude remuneration of an ad hoc or occasional nature.

"seafarer", which means a person employed on a ship on the business of the ship, other than a pilot, a person temporarily employed on the ship in port, a person included in the class of persons defined as special personnel in section 283 of the Navigation Act 1912 or a trainee.

- . The business of the ship essentially means the crew functions associated with the operation of the ship, ie. the navigation, propulsion, catering, attention to the needs of passengers and the day-to-day maintenance of the ship at sea.
- . Special personnel are persons employed in capacities, other than as members of the crew, on special purpose ships.

Special purpose ships are ships which have a purpose other than the carriage of passengers or cargo, or the provision of services to ships or shipping. Examples of special purpose ships are research ships and drilling ships. Examples of special personnel are the scientists, technicians or drilling personnel on such ships.

"seafarer berth", which means a berth on a ship that is normally used by a seafarer.

- . In the Bill, the term "seafarer berth" is not used in the sense of a bed or cabin. Rather, the term is used to denote a position on a ship to which a seafarer is engaged to serve.
- . The annual salary attaching to each seafarer berth is used in clause 12 to calculate the notional income tax amount and, in turn, the amount of the grant unit applicable to that berth and, ultimately, the total amount of grant payable in respect of the crew of the ship. The relevant industrial award nominates the annual salary applicable for each category of seafarer berth in each type of ship in the Australian maritime industry.

"Secretary", which means the Secretary of the Department.

"trainee", which is defined to include a cadet, a trainee engineer officer, a trainee integrated rating and a provisional integrated rating. This list is not intended to be exhaustive and any other type of trainee seafarer would also be covered by this definition.

PART 3 - GRANTS TO EMPLOYERS OF AUSTRALIAN-RESIDENT SEAFARERS

This Part sets out the eligibility criteria for the grant and how the amount of grant is to be calculated.

- To qualify for a grant in a relevant financial year, a ship must be Australian-operated, its crew must be employed by an Australian employer and the ship must spend not less than half its operational service during the year on international voyages.

The grant is payable to the employer of the crew.

The amount of grant payable in respect of a ship is based on the sum of the notional income tax liabilities of the Australian-resident seafarers employed on the ship during the year.

Clause 8 - Eligibility for grant

This clause determines to whom the grant is payable. The grant is payable to a person who has an eligible employment period (defined in clause 10) in relation to an eligible ship for a relevant year if, during the eligible employment period, the ship was engaged in international voyages for at least the minimum number of days (minimum number of days on international voyages is defined in clause 11).

Essentially, the grant is payable to the employer of the seafarers on an eligible ship if, in the relevant year, the ship satisfies the criterion of being on international voyages for at least the minimum number of days calculated under clause 11.

Clause 9 - Amount of grant

This clause determines how the actual amount of grant is to be calculated.

The amount of grant is the sum of the grant units calculated for the seafarer berths on the ship.

Each grant unit is calculated according to the formula:

$$\frac{\text{Eligible days} \times \text{Notional tax liability}}{365}$$

Where:

Eligible days means the number of days in the eligible employment period (defined in clause 10) when the seafarer berth concerned was occupied by an Australian-resident seafarer.

Notional tax liability means the amount calculated under section 12 in relation to that berth for the relevant year.

Because each grant unit is calculated on an individual berth basis, the amount of grant (being the sum of the grant units) will take into account any days that a berth is unoccupied, or is occupied by a non-resident seafarer.

Clause 10 - Eligible employment period

This clause establishes who may have an eligible employment period, and what an eligible employment period is.

Subclause (1) provides that a person has an eligible employment period in relation to an eligible ship for a relevant year if the person is an Australian national and, at any time during the year, was the employer of the crew of the ship.

Subclause (2) provides that if the person is the employer of the crew on the ship for the whole of the relevant year, then the eligible employment period is the whole year.

If the person is the employer of the crew for only part of the relevant year, then the eligible employment period is that part of the year.

Clause 11 - Minimum number of days of international voyages

This clause provides that the minimum number of days of international voyages for the purposes of qualifying for a grant under section 8 is according to the formula:

$$\frac{\text{Employment period} - \text{Repair and lay-up period}}{2}$$

where:

Employment period is the number of days in the eligible employment period (defined in clause 10).

Repair and lay-up period means the total number of days in the eligible employment period that the ship was out of service for repair or maintenance, or was laid up.

Essentially, in order to qualify for a grant an eligible ship must be engaged on international voyages for not less than half the period that the ship is operational.

Clause 12 - Notional tax liability

The amount of grant payable in respect of a ship is based on the notional income tax liabilities of the Australian-resident crew members employed on the ship during the year, calculated in respect of each position (or seafarer berth) on the ship.

The sum of the notional tax liabilities for the seafarer berths on a ship forms the basis for calculating the grant under clause 9.

Subclause (1) provides that the notional tax liability for a relevant year in relation to a seafarer berth on a ship other than a tanker is the notional basic tax liability in relation to that berth.

In the case of a berth on a tanker, the notional tax liability is the sum of the notional basic tax liability and the notional tanker allowance tax liability in relation to that berth.

Subclause (2) provides the formula for calculating the notional basic tax liability in relation to a seafarer berth for a relevant year.

The notional basic tax liability is:

$$\text{Basic tax amount} \times \text{Voyage leave multiplier}$$

where:

Basic tax amount means the amount calculated for the berth under subsection (3).

Voyage leave multiplier means the multiplier that, under the regulations, is the voyage leave multiplier applicable to the seafarer berth for the year.

The voyage leave multiplier component of the notional basic tax liability of a seafarer berth reflects the fact that a ship requires approximately two crews in order to function on a continual basis.

While serving on a ship, seafarers work a seven day week. To compensate for this, and to cover public holidays and normal vacation leave, seafarers get home leave (voyage leave) broadly equivalent to the amount of time served on the ship. (Under the Modern Ships Award, seafarers receive leave at the rate of 0.926 days for each day on the ship.)

Therefore, the annual cost to the employer of filling a seafarer berth on a ship is the sum of the wages cost of the seafarer on the ship and the wages cost of the alternate occupier of the berth on voyage leave.

It is intended that the voyage leave multiplier prescribed in regulations will reflect the award rate for voyage leave or, if an enterprise agreement is applicable instead of an award, the voyage leave rate specified in that agreement.

Subclause (3) determines the basic tax amount as the amount of income tax that would be payable by an Australian-resident seafarer occupying that berth for the year if:

- (a) the income tax were calculated in accordance with clause 1 of Part 1 of Schedule 7 to the *Income Tax Rates Act 1986* (the Rates Act) as applicable to that year; and
- (b) paragraph (a) of clause 1 of Part 1 of that Schedule were omitted; and

- (c) the whole of the salary payable in relation to the berth were taxable income within the meaning of the Rates Act.

The effect of subclause (3) is to arrive at the amount of income tax that would be payable on the annual basic salary applicable to the berth concerned, if the occupant had no other income and was not entitled to any income tax deductions or rebates (other than the Australian-resident tax-free threshold).

Subclause (4) determines the notional tanker allowance tax liability as the amount of income tax that would be payable by an Australian-resident seafarer occupying the berth in respect of the annual amount of tanker allowance if:

- (a) the seafarer had occupied the berth for the whole year; and
- (b) the total amount of salary and tanker allowance payable in relation to the berth were taxable income within the meaning of the Rates Act; and
- (c) paragraph (a) of clause 1 of Part 1 of Schedule 7 of the Rates Act were omitted; and
- (d) the income tax were calculated by adding together the amount or amounts calculated:
 - (i) at the highest rate that would be applicable under clause 1 of Part 1 of Schedule 7 of the Rates Act to the taxable income represented by the amount in paragraph (b) on so much of the tanker allowance as does not exceed the amount of taxable income on which tax would be payable at that rate; and
 - (ii) at the next highest rate that would be so applicable to the taxable income represented by the total amount in paragraph (b) on the remainder of the tanker allowance.

The effect of subclause (4) is to arrive at the amount of income tax that would be payable on the tanker allowance, taking into account the allowance would be payable in addition to the seafarer's basic salary. Therefore, the income tax on the tanker allowance component of the total income needs to be calculated at the highest tax rate relevant to the total income.

However, if the tanker allowance component of the total income straddles two tax rate bands, then the amount of tanker allowance below the higher tax rate threshold would be calculated at the lower rate, and the amount of tanker allowance in excess of the threshold would be calculated at the higher rate.

A seafarer engaged on a tanker is paid tanker allowance only while serving on the tanker, not while on voyage leave. Therefore, the employer effectively only pays one year's tanker allowance amount in respect of each berth. Accordingly, no voyage leave multiplier is applied to the tanker allowance tax liability amount.

PART 4 - PAYMENT OF GRANTS

Clause 13 - Application for grant

This provision requires that an application for a grant under section 8 must be in writing in accordance with the approved form, must include the information required by the form and must be signed and witnessed.

The application must be submitted within the time limits specified in the regulations or, if the Secretary allows an additional period of time, then the application must be submitted within that period.

Clause 14 - Signature and witnessing of applications

This clause sets out the requirements for the signing and witnessing of grant applications.

Subclause (1) requires that an application by an individual must be signed personally in the presence of a witness by either the applicant or a person authorised by the applicant. In the case of an application by a body corporate, the application must be under the seal of the body corporate or be signed personally, in the presence of the witness, by a person authorised by the body corporate.

Subclause (2) requires that if the applicant is an individual, the authorisation for another person to sign an application on behalf of the applicant must be in writing and witnessed.

Subclause (3) requires that if the applicant is a body corporate, the authority for an individual to sign an application on its behalf must be under the seal of the body corporate.

Clause 15 - Decision on application for grant

This clause sets out the process for the Secretary to decide on an application for a grant and to notify the applicant of that decision.

Subclause (1) requires the Secretary to decide as soon as reasonably practicable whether the person applying for a grant in respect of a relevant year is entitled to a grant.

Subclause (2) provides that if the Secretary decides that the applicant is entitled to a grant, the Secretary must approve payment and give the applicant written notice of the decision and the amount of grant.

Subclause (3) provides that if the Secretary decides that the applicant is not entitled to a grant, the Secretary must give the applicant written notice of the decision and the reasons for the decision.

PART 5 - MISCELLANEOUS

Clause 16 - Power to require persons to answer questions etc.

This clause enables authorised persons (persons appointed under clause 24) to obtain information relevant to the entitlement of a person to a grant.

Subclause (1) provides that an authorised person, who has reason to believe that a person (called the "information source") is able to provide information relating to the entitlement of a person to a grant under section 8, may give written notice to the information source requiring the latter to answer relevant questions and to produce such relevant documents and records as are specified in the notice.

Subclause (2) requires that the notice given under subsection (1) must set out the effect of subsection (3).

Subclause (3) makes it an offence for a person to provide a document or record prepared by another person knowing it to contain false or misleading material, without also giving a written statement acknowledging this.

A penalty of 6 months imprisonment is provided for breach of this provision.

Subclause (4) allows an authorised officer to make copies of, or take and keep abstracts of, documents or records produced under this section.

Clause 17 - Offences

Subclause (1) makes it an offence, with a penalty of 5 years imprisonment, to intentionally obtain, or attempt to obtain, a grant under section 8 that is not payable.

Subclause (2) makes it an offence, with a penalty of 6 months imprisonment, to intentionally or recklessly make a statement, either orally or in writing, that is false or misleading in a material particular.

Subclause (3) makes it an offence, with a penalty of 30 penalty units, to refuse or fail, without reasonable excuse, to answer a question or produce a record or document when so required by an authorised person.

Clause 18 - Conduct by directors, servants or agents

Subclause (1) provides that if in any proceedings for an offence against subsection 16(3) or section 17 in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority and that the director, servant or agent had that state of mind.

Subclause (2) states that any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of their actual or apparent authority is deemed to be the conduct of the body corporate for the purposes of subsection 16(3) and section 17, unless reasonable precautions were taken and due diligence exercised to avoid such conduct.

Subclause (3) provides that a reference in subsection (1) to the state of mind of a person includes a reference to the person's knowledge, intention, opinion, belief or purpose and the person's reasons for the intention, opinion, belief or purpose.

Subclause (4) states that a reference to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or of a State or Territory.

Subclause (5) provides that a reference to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Clause 19 - Time for prosecutions

This clause varies the time limits for the commencement of prosecutions which would otherwise apply under section 15B of the *Crimes Act 1914*.

Subclause (1) allows prosecutions for offences against the Act to be brought within 3 years after the offence was committed.

Subclause (2) provides that subsection (1) does not apply to offences against subsection 17(1). This means that, in accordance with the *Crimes Act 1914*, there is no time limit for the commencement of a prosecution against subsection 17(1).

Clause 20 - Recovery of grant on conviction

Subclause (1) allows a court, if a person has been convicted of an offence under subsection 16(3) or section 17, to order the person to refund to the Commonwealth the amount of any grant wrongfully obtained, in addition to imposing a penalty.

Subclause (2) provides that if a court makes an order under subclause (1) and the court has civil jurisdiction to the extent of the amount to be refunded, the order is enforceable as a final judgement.

Subclause (3) provides that if a court makes an order under subclause (1) but the court does not have civil jurisdiction, or only has jurisdiction for a lesser amount than that to be refunded, the proper officer of the court must issue a certificate in the prescribed form containing the prescribed particulars.

Subclause (4) allows the certificate issued under subclause (3) to be registered in a court having civil jurisdiction to the extent of the amount to be refunded.

Subclause (5) provides that on registration in accordance with subsection (4), the certificate is enforceable as a final judgement.

Subclause (6) provides that the costs of registration and other proceedings under this clause are taken to be payable under the certificate.

Clause 21 - Notification of right to seek review

This provision requires applicants to be notified of a right to seek review of the Secretary's decision in respect of a grant application.

Subclause (1) requires that a notice given under subsection 15(2) or (3) must include a statement to the effect that a person affected by the decision may, if dissatisfied with the decision, apply to the Administrative Appeals Tribunal for a review of the decision.

Subclause (2) provides that if the notice of right to seek review is not given, this does not affect the validity of the decision.

Clause 22 - Application for review

This clause enables application to be made to the Administrative Appeals Tribunal for a review of the Secretary's decision under paragraph 13(d) or subsection 15(1) in relation to the application for a grant.

Clause 23 - Delegation by Secretary

This clause provides that the Secretary may delegate all or any of the Secretary's powers or functions under the Act to a person holding, or performing the duties of, a Senior Executive Service office in the Department.

Clause 24 - Appointment of authorised persons

This clause enables the Secretary to appoint officers of the Australian Public Service as authorised persons for the purposes of the Act.

Clause 25 - Return for Parliament

Subclause (1) requires the Secretary, at the end of a financial year commencing on or after 1 July 1996, to give the Minister a return setting out:

- (a) the name and address of each recipient of a grant in the year;
- (b) the amount of each grant paid; and
- (c) such other particulars as may be prescribed.

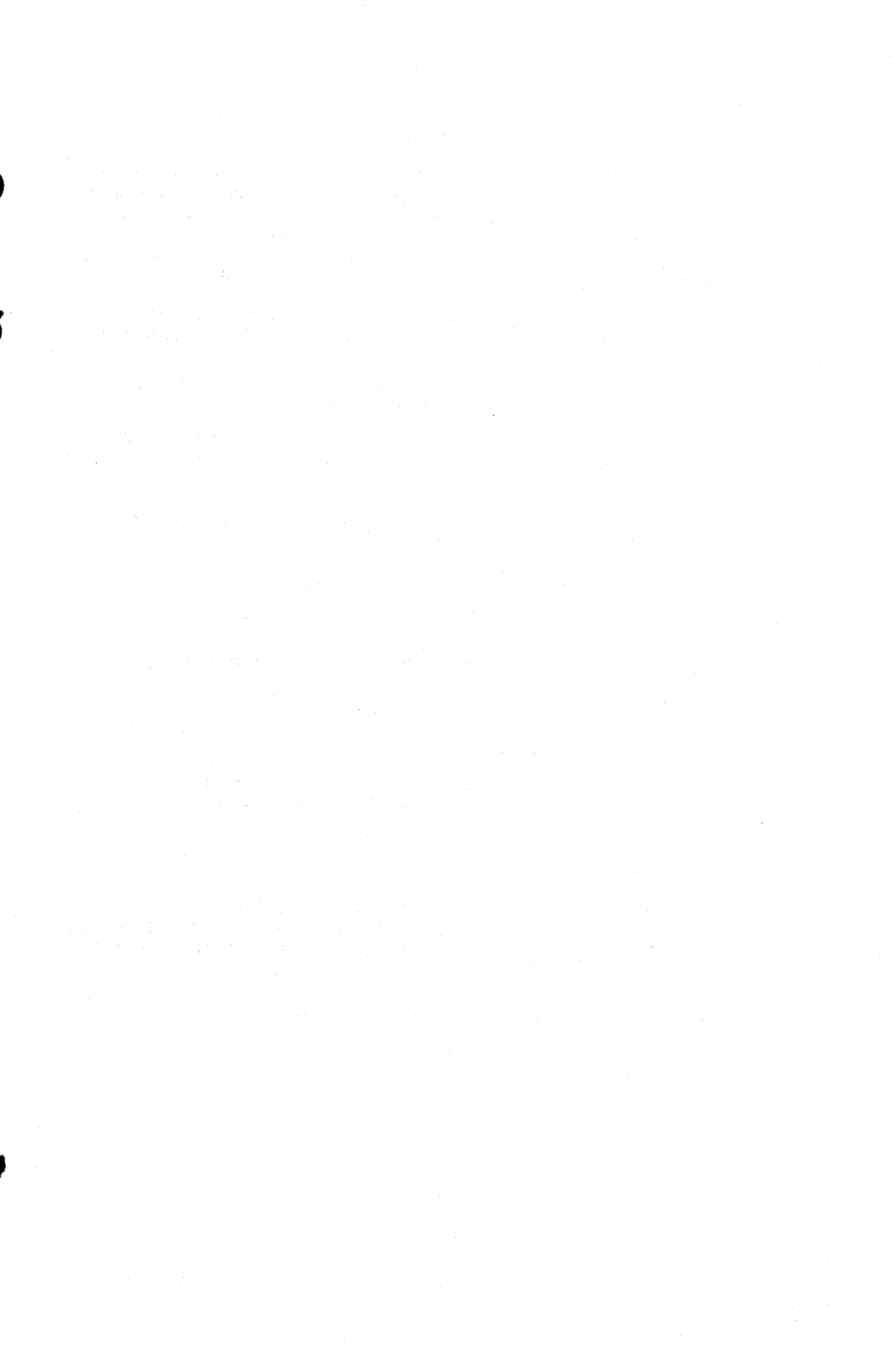
Subclause (2) requires the Minister to table a copy of the return before each House of Parliament within 15 sitting days of receipt of the return.

Clause 26 - Appropriation

This clause stipulates that grants payable under the Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

Clause 27 - Regulations

This clause enables the Governor-General to make regulations which prescribe matters required or permitted by the Act, or necessary or convenient for carrying out or giving effect to the Act.





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