

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

SHIPS (CAPITAL GRANTS) BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport,
the Hon. Peter Morris MHR)

SHIPS (CAPITAL GRANTS) BILL 1987

OUTLINE

The Bill provides an incentive for the introduction of modern technologically advanced ships to the Australian fleet. The incentive is in the form of a taxable grant of 7% of the capital cost of eligible ships.

ELIGIBILITY FOR GRANTS

To be eligible for a grant under this Bill (clause 8) a ship must be new, or newly acquired secondhand, and

- be crewed in accordance with specified crew levels;
- be registered in Australia and crewed with Australian residents;
- if a newly acquired secondhand ship, it must not have been previously registered in Australia; and be no more than five years old at the time of purchase by the Australian shipowner.

In addition, a grant will be payable for an existing Australian ship which would otherwise not be eligible, if it has been extensively modified and meets the crew level specified by the legislation for that category of ship (clause 5). The grant payable in this case is to be 7% of the cost of the qualifying modifications (clause 11).

Grants under this legislation are subject to a sunset clause. To be eligible for a grant a new ship must be delivered and registered in Australia between 1 July 1987 and 30 June 1992. Secondhand ships must be delivered and registered in Australia between 1 July 1987 and 30 June 1990 (clause 9).

SHIP CATEGORY CERTIFICATES

In order to qualify for a grant a ship must meet the crew level specified for that category of ship. The Secretary to the Department of Transport will, on an application by a shipowner, issue a certificate specifying the category into which a ship falls, based on the ship's particulars and the trade or trades in which it is to be engaged (clause 12). When evidence is provided of the ship being crewed in accordance with this certificate, the grant will become payable.

Each ship category will have a crewing level specified in the Bill or in regulations (clause 7). The shipowner is to be required to provide, annually for five years, a statement certifying compliance with a ship category certificate, and other conditions attaching to a grant paid under this Bill (clause 21).

ADMINISTRATION

The Bill also includes a range of standard administrative provisions to govern the implementation of the new assistance regime, modelled on provisions contained in recent Bounty legislation. In particular:

- clauses 15-17 relate to the various administrative requirements for the lodgement of claims for payment of grants and variations to claims
- clauses 18-19 relate to the determination of the purchase price of a ship or qualifying modifications for the purposes of assessing the amount of grant.
- clauses 28, 30-33 cover administrative matters concerning forms, penalties applicable for offences under the Bill and recovery of grants.
- clauses 34, 36-42 cover various miscellaneous matters including return for Parliament, the power of delegation, review by the Administrative Appeals Tribunal, appropriation of monies to finance the grant and the standard regulation making power.

FINANCIAL IMPACT STATEMENT

It has been estimated that ships (both new and secondhand) to the value of \$500m could be introduced as a consequence of this legislation. This estimate is based on prevailing market prices for ships and assumes replacement tonnage as well as additions to the present Australian flag fleet.

If this projected level of expenditure occurs, grants to the value of \$35m will become payable over a five year period (1987-88 to 1990-92), the life of the legislation. As the grants involved are taxable, around half of this amount is expected to be recouped. That is, the legislation is expected to have a budgetary cost of a little under \$18m spread over a period of up to six years. (Company tax payments are lagged a year.)

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

NOTES ON CLAUSES

PART 1 PRELIMINARY

CLAUSE 1 - SHORT TITLE

The Act is to be entitled the "Ships (Capital Grants) Act 1987".

CLAUSE 2 - COMMENCEMENT

The Act is to commence on the day on which this Bill receives the Royal Assent.

CLAUSE 3 - INTERPRETATION

This clause defines terms used in the Bill.

"Secretary" refers to the Secretary to the Department of Transport.

CLAUSE 4 - HIRE PURCHASE AGREEMENTS DEEMED PURCHASES ETC.

This clause deems that a ship acquired under a hire purchase agreement is purchased at the time of entering into the agreement. This allows the shipowner who acquires the ship to be eligible for a grant even though ownership is not transferred to the shipowner until the last payment under the agreement is made.

Paragraph (d) provides that a shipowner will be deemed to have sold the ship if and when, under the terms of the hire purchase agreement, the shipowner loses the right to acquire the ship. The effect of this paragraph is that, in these circumstances, the grant will be repayable according to the terms of clause 26.

CLAUSE 5 - EXTENSIVELY MODIFIED

This clause provides an avenue for existing ships, which would otherwise not be eligible for a grant under the Bill, to be converted to eligible ships by being extensively modified. Two tests will be involved. First, the modifications to the ship in question must be so extensive that the ship's operational characteristics (which includes efficiency) are significantly changed. Secondly, the modifications made must permit the ship to meet for the first time the crewing levels specified for that category of ship in this Bill (or regulations made under it).

CLAUSE 6 - CATEGORIES OF SHIPS

Sub-clause (1) sets out the categories of ships for the purposes of this Bill as

- tankers engaged in international trades;
- tankers engaged in Australian coastal trades; and
- ships other than tankers.

Sub-clause (2) provides for regulations to specify additional ship categories and the maximum crew numbers for those categories.

Sub-clause (3) sets out the factors to be taken into account in making a regulation prescribing an additional category of ship. The emphasis is on the workload involved and hence the crew required for efficient operation of the ship in question. The factors involved are:

- the particular characteristics of the ship;
- the way the ship is to be used or operated;
- the trade the ship is to be engaged in including the intensity of trading; and
- the frequency with which it will be engaged in any trade.

CLAUSE 7 - MAXIMUM CREW NUMBERS

This clause specifies the maximum crew numbers for the ship categories set out in clause 6

- for tankers trading internationally and ships other than tankers the maximum crew number is 21;
- for tankers in the Australian coastal trade the maximum crew number is 23; and
- for ships in categories specified in the regulations the maximum crew number will also be specified in the regulations.

Sub-clause (2) makes it clear that where the Secretary, under clause 22, approves the carriage of additional crew, the maximum crew number for the ship is that approved by the Secretary.

PART II - GRANTSCLAUSE 8 - SPECIFICATION OF GRANTS

This clause sets out which ships are eligible for a grant and the conditions to be satisfied by the shipowner. Grants are only payable for trading ships. Consequently, fishing vessels, inland waterways vessels, pleasure craft, tugs and offshore industry vessels etc. are excluded from the scheme.

Sub-clause (1) makes new ships purchased by an Australian shipowner eligible.

Sub-clause (2) provides for secondhand trading ships purchased by an Australian shipowner which are less than five years old at the time of purchase and which have not previously been registered in Australia to be eligible.

Sub-clause (3) allows a grant to be payable in respect of a ship owned by an Australian shipowner and converted to an eligible ship by extensive modifications.

Sub-clause (4) sets out the other conditions which must be satisfied before a grant is payable. These conditions are

- the ship has been issued with a category certificate;
- the ship is still owned by the person who purchased it or converted it;
- the ship is in commission;
- the ship has been a trading ship registered at all times in Australia since commissioning after purchase or conversion;
- a crew has been engaged for the ship;
- all crew members are Australian residents except where carriage of non-residents has been approved by the Secretary under clause 22; and
- the crew number has not exceeded the crew number specified for that ship category or approved by the Secretary under clause 22.

Sub-clause (5) provides that a grant is not payable unless the shipowner intends to

- remain the owner of the ship for at least five years after payment of the grant; and

- ensure that

- (i) while the ship is commissioned it remains a trading ship registered in Australia;
- (ii) the ship trades in compliance with its category certificate;
- (iii) the ship will be crewed with Australian residents except where carriage of non-residents has been approved by the Secretary under clause 22; and
- (iv) the ship will not be crewed in excess of the number specified for its ship category or approved by the Secretary under clause 22.

CLAUSE 9 - GRANTS NOT PAYABLE

This clause provides that the grants will only be available for ships ordered or purchased after the announcement of the scheme, i.e. 22 December 1986, and delivered and registered after 1 July 1987. The legislation is subject to a sunset clause and is only to operate for a specific time period. This clause also contains provisions to prevent payment of a grant where a scheme has been contrived to obtain a grant which would not otherwise be payable.

Sub-clause (1) allows grants to be payable in respect of new ships ordered after 22 December 1986 and delivered and registered in Australia between 1 July 1987 and 30 June 1992.

Sub-clause (2) allows grants to be payable for secondhand ships ordered after 22 December 1986 and delivered and registered in Australia between 1 July 1987 and 30 June 1990.

Sub-clause (3) allows grants to be payable for conversion of a ship by an Australian shipowner if the conversion was ordered after 22 December 1986 and the converted ship was delivered between 1 July 1987 and 30 June 1992.

Sub-clause (4) makes it clear that a ship is only to be eligible for a grant under this legislation once.

Sub-clause (5) provides that a grant is not payable for the purchase of a ship if another shipowner arranged its purchase before 22 December 1986 or received delivery before 1 July 1987 unless the Secretary is satisfied that there has been no arrangement between the parties involved for the purposes of obtaining a grant not otherwise payable.

Sub-clause (6) contains equivalent provisions where a ship has been extensively modified within the meaning of clause 5.

CLAUSE 10 - GRANTS PAYABLE IN RESPECT OF PURCHASES
ETC. OUTSIDE AUSTRALIA

This clause is to make it clear that this legislation is intended to cover the construction, purchase and conversion of ships both inside and outside Australia.

CLAUSE 11 - AMOUNT OF GRANT

Sub-clause (1) provides that the level of grant in respect of new and secondhand eligible ships is 7% of the purchase price of the ship.

Sub-clause (2) provides that a grant of 7% of the cost of the ship's conversion is payable in respect of a converted ship.

Purchase price in this context will be taken to be the actual amounts, expressed in Australian dollar terms, paid by the owner for the acquisition of a ship, or the cost of converting the ship to achieve eligibility for a grant under this Bill. Costs associated with the financing of a purchase will be excluded from purchase price for the purposes of grant calculation.

PART III - CATEGORY CERTIFICATES

CLAUSE 12 - APPLICATIONS FOR CATEGORY CERTIFICATES

This clause sets out the requirements of a valid application for a category certificate.

Sub-clause (1) allows an application to be made as soon as particulars of the ship are known.

Under sub-clause (2) an application must

- be in accordance with the approved form;
- include such information as is required by the form;
- specify the categories into which the applicant considers the ship will fall; and
- be signed and witnessed as required by clause 28.

Sub-clause (3) requires the Secretary to examine an application for a category certificate as soon as practicable after lodgement, make such inquiries as are considered necessary and, where satisfied that the ship falls within the category or categories applied for, to issue a category certificate for the ship specifying that category or categories. Where the Secretary is not so satisfied, the issue of a certificate is to be refused.

Sub-clauses (4) and (5) require the Secretary to give to the applicant a statement of reasons for refusing to issue a category certificate or for refusing to include in an issued certificate a category applied for.

CLAUSE 13 - REVIEW OF DECISIONS ABOUT CATEGORY CERTIFICATES

This clause provides an appeal mechanism in respect of a decision to refuse to issue a category certificate or to include a particular category in a certificate.

Sub-clauses (1) and (6) provide that, where the Secretary refuses to issue a category certificate or where a category certificate is issued which does not specify a category applied for, the shipowner can, within 28 days of issue, apply to have the decision reviewed by the Secretary.

Sub-clauses (2) and (7) require the Secretary to consider applications for review as soon as practicable after lodgement and, where the Secretary is satisfied that the ship would fall into the category sought, to issue a certificate or include that category in the ship's category certificate. If the Secretary is not so satisfied then the request to issue a certificate or to change the certificate is to be refused.

Sub-clauses (3), (4) and (8) require the Secretary to furnish to the applicant a statement of the reasons for refusing to issue a certificate or to include a category in the certificate.

Sub-clause (5) provides that an application for review does not prevent a shipowner making a fresh application.

CLAUSE 14 - VARIATION OF CATEGORY CERTIFICATES

Sub-clause (1) provides that where a ship category certificate has been issued but the shipowner wishes to enter a trade not covered by the certificate he may apply to the Secretary for the insertion of an additional category in the certificate.

Sub-clause (2) requires an application to

- be in the approved form;
- include such information as is required;
- specify the category to be added to the certificate; and
- be signed and witnessed in accordance with clause 28.

Sub-clause (3) requires the Secretary to examine an application for the insertion of an additional category as soon as practicable after lodgement, make such inquiries as are considered necessary, and where satisfied that an additional category should be inserted, insert that category. Where the Secretary is not so satisfied the insertion of an additional category is to be refused.

Sub-clause (4) requires the Secretary to furnish an applicant with a statement of reasons for refusing to insert an additional category.

PART IV - PAYMENT OF GRANTS

CLAUSE 15 - CLAIMS FOR PAYMENT OF GRANT

Sub-clause (1) allows a person who claims entitlement to a grant to lodge a claim for payment.

Sub-clause (2) requires a claim to

- be in the approved form;
- include such information as is required;
- contain the statements of intention required under sub-clause 8(5); and
- be signed and witnessed in accordance with clause 28.

Sub-clause (3) requires the Secretary to consider a claim as soon as practicable after lodgement and where he is satisfied that the shipowner is entitled to a grant, approve payment of the grant. Where the Secretary is not satisfied that a shipowner is entitled to a grant, payment is to be refused.

Sub-clause (4) requires the Secretary to give to the claimant a statement of reasons for refusing to approve payment of a grant.

CLAUSE 16 - VARIATION OF INADEQUATE CLAIM

This clause allows for a variation to be made to a claim where inadvertent error resulted in an incorrect claim being made.

Under sub-clause (1) a person who has lodged a claim for a grant which, because of inadvertent error, is less than the amount entitled to may lodge a claim for the difference.

Sub-clause (2) sets out the information to be included in a claim under this provision and provides a 3 month time limit for making such a claim.

Sub-clause (3) allows a claim under this clause to be considered as part of the original claim if the original claim has not yet been dealt with.

Sub-clause (4) requires the Secretary to examine such a claim as soon as practicable after lodgement, make such inquiries as are considered necessary and, where satisfied that the claimant is entitled to the additional amount, approve payment of the additional amount. Where the Secretary is not satisfied that a variation to a claim is in order, payment of an additional amount is to be refused.

Sub-clause (5) provides that where the Secretary refuses to approve payment of an additional amount the claimant is to be provided with a statement setting out the reasons for the refusal.

CLAUSE 17 - VARIATION OF EXCESSIVE CLAIM

Sub-clause (1) requires a person who has lodged a claim for payment of a grant and who becomes aware that the amount claimed exceeds the amount entitled to by more than \$100, to advise the Secretary of the excess within 28 days of discovering the excess. A penalty of \$1000 or 6 months imprisonment is set down for a breach of this sub-clause by a natural person and a fine of \$5000 for breach by a body corporate.

Sub-clause (2) sets out the requirements for detailing an excessive claim.

Sub-clause (3) allows a claim for payment of grant that has not yet been dealt with to be amended by the amount of excess claim advised under this provision.

Sub-clause (4) requires that where the Secretary is satisfied that an overpayment in excess of \$100 has been made, then a demand for repayment of the amount of the overpayment is to be served on the claimant and the claimant is liable to repay the overpayment to the Commonwealth.

CLAUSE 18 - DETERMINATION OF PRICES AND COSTS

As the grant payable is a proportion of the purchase price of the ship, or the cost of conversions made to it, it is important to ensure that these prices are correct and that unwarranted calls on the taxpayer are prevented. This clause provides the Secretary with the necessary powers to determine prices and costs.

Sub-clause (1) allows the Secretary to determine the price of a ship for the purpose of this Bill. In order to exercise this power the Secretary must form the opinion that, having regard to sound accounting principles, the price paid by the shipowner

- is incorrect;
- has been fixed in order to obtain an increase in the grant;

- is unduly higher than prices paid by other persons for similar ships;
- has been increased as a result of a special relationship between the vendor and purchaser; or
- is unreasonable for a prescribed reason.

Having formed such an opinion the Secretary is empowered to determine a price for the ship having regard to

- the prices of comparable ships; and
- any valuation of the ship made under clause 19.

Sub-clause (2) contains equivalent provisions for determining the cost of conversion of an extensively modified ship.

The Secretary's powers under this clause are subject to review by the Administrative Appeals Tribunal, when decisions to refuse to insert a category in a certificate or to refuse to approve payment of the grant sought are reviewed under clause 38.

CLAUSE 19 - VALUATION OF SHIPS ETC.

Where the Secretary has decided under clause 18 to determine a price for a ship or the cost of conversion, an independent valuation of the ship or the cost of conversion may be made. The valuation is to be made by a qualified person who would not be influenced by either the Commonwealth or the shipowner. This is to ensure that, in determining a price, the Secretary has access to unbiased technical advice.

CLAUSE 20 - COST OF VALUATION

Sub-clause (1) makes the cost of a valuation of the price of a ship (or the cost of conversion) payable by the applicant and enables it to be deducted from the amount of the grant.

Sub-clause (2) enables the cost of a valuation to be recovered in the event a grant does not become payable.

PART V - CREWS OF SHIPS FOR WHICH GRANT PAID

CLAUSE 21 - EVIDENCE OF CREWING

Sub-clause (1) requires a shipowner in receipt of a grant to provide to the Secretary in April each year, a statement certifying that during the previous year the ship was crewed in accordance with the crew level specified for its category and that the ship's crew were Australian residents. This requirement will apply for five years or until the shipowner sells the ship. The statement is to be in a form approved by the Secretary.

Sub-clause (2) requires a shipowner on request to provide evidence of the voyages and crew details of the ship to the Secretary.

CLAUSE 22 - SHIPS MAY BE OPERATED ABOVE MAXIMUM CREW NUMBER IN CERTAIN CIRCUMSTANCES ETC.

This clause allows a ship to carry additional crew, or a non-Australian resident crew member, to cover short term needs in special circumstances. These could include the rectification of teething problems on new, or newly modified ships, or where a person with particular skills is required and no Australian resident is available (eg a guarantee engineer required on a new ship during its shakedown voyage).

Under sub-clause (1) a shipowner in receipt of a grant may apply to the Secretary for approval to operate a ship at a crew level higher than the maximum crew level for that ship if the shipowner considers this is required due to special circumstances.

Sub-clause (2) sets out the requirements for an application under sub-clause (1).

Sub-clause (3) requires the Secretary, as soon as practicable after the making of an application under sub-clause (1), and if satisfied that special circumstances exist, to approve the operation of a ship on a voyage or voyages with the higher crew level. Approval is to be denied if the Secretary is not so satisfied.

Sub-clause (4) provides that the special circumstances mentioned in sub-clause (1) may exist because the ship is new or has been recently modified.

Sub-clause (5) allows a shipowner in receipt of a grant to apply to the Secretary for approval to operate the ship with non-Australian residents as crew members if the shipowner considers that this is required due to special circumstances.

Sub-clause (6) sets out the requirements for an application under sub-clause (5).

Sub-clause (7) requires the Secretary, as soon as practicable after the making of an application under sub-clause (5), and if satisfied that special circumstances exist, to approve the operation of the ship on a voyage or voyages with non-Australian resident crew members. Approval is to be denied if the Secretary is not so satisfied.

Sub-clause (8) provides that the special circumstances mentioned in sub-clause (7) may apply because a person with particular skills is required to be a member of the crew and no Australian resident possessing those skills is available for a particular voyage.

Sub-clause (9) provides that where approval of an application under sub-clause (1) or (5) is refused the Secretary is to provide the shipowner with a statement of reasons.

CLAUSE 23 - SHIP MAY BE OPERATED WITH TRAINEES

This clause provides that when a ship carries trainees they are not to be counted as members of the crew for the purposes of the Bill provided those trainees are on board in accordance with conditions approved by the Secretary. It is intended that the conditions approved will be in line with training schemes determined by the maritime industry.

CLAUSE 24 - CREW MAY BE FEWER THAN MAXIMUM CREW NUMBER

This clause makes it clear that the crew number specified for a particular ship category is a maximum, and the ship is not required by this Bill to be crewed at that number.

CLAUSE 25 - MANNING ORDERS

The clause makes it clear that the crewing levels specified for the purposes of this Bill apply notwithstanding any manning orders issued under the Navigation Act or any manning notices issued under the Income Tax Assessment Act.

PART VI - REPAYMENT OF GRANTSCLAUSE 26 - REPAYMENT OF GRANTS

Sub-clause (1) provides that a shipowner who has been paid a grant and who disposes of the ship or registers it outside Australia within 5 years from the payment of the grant will pay to the Commonwealth the amount of the grant, reduced on a pro-rata basis according to the time the ship has been held.

Sub-clause (2) provides that a shipowner is to repay the full amount of the grant if he allows the ship to be

- operated with a non-Australian resident crew member unless approved under clause 22;
- traded so that it no longer complies with its category certificate; and
- operated with a greater crew than is specified for its ship category unless approved under clause 22.

Under sub-clause (3) a shipowner will only be taken to have allowed a breach of sub-clause (2) if all reasonable steps to prevent the breach have not been taken.

PART VII - ADMINISTRATIONCLAUSE 27 - FEES

Sub-clause (1) provides that regulations may prescribe fees for applications or claims made under this Bill. It is intended that any fees specified would be to recover the cost of processing applications.

Under sub-clause (2) an application would not be deemed a valid application until such time as the prescribed fee had been paid.

CLAUSE 28 - FORMS

Sub-clause (1) provides that where a form lodged under the Bill is required to be signed and witnessed in accordance with this clause it shall

- in the case of a natural person, be signed in the presence of a witness by that person or a person authorised by that person to sign forms under this Bill; or
- in the case of a body corporate the form is to be under the seal of the body corporate or signed in the presence of a witness by a person authorised to sign on behalf of the body corporate.

Sub-clause (2) specifies that for a person to be authorised to sign on behalf of a person or a body corporate requires notice of the authorisation to be given to the Secretary and

- where the person is a natural person, signed in the presence of a witness; or
- where the person is a body corporate, under the seal of the body corporate.

CLAUSE 29 - POWER TO REQUIRE PERSONS TO ANSWER QUESTIONS ETC.

This clause empowers an officer of the Department, authorised by the Secretary, to require a person to answer questions and to produce documents and records to check compliance with the conditions of a grant. The officer must have reasonable grounds for believing that a person can provide information before that person can be required to answer questions.

Sub-clause (3) makes it an offence for a person to produce documents prepared by another person, knowing them to be false or misleading without also giving a statement in writing acknowledging this. The penalty, in the case of a natural person is a fine of \$1000 or imprisonment for 6 months or both and for a body corporate, a fine of \$5000.

Sub-clause (4) allows an authorised officer to make copies or retain extracts from documents produced under this clause.

CLAUSE 30 - OFFENCES

Sub-clause (1) makes it an offence to obtain or attempt to obtain a grant that is not payable. The penalty in the case of a natural person is a fine of \$10,000 or imprisonment for 5 years or both. In the case of a body corporate the penalty is a fine of \$50,000.

Sub-clause (2) makes it an offence to provide false or misleading information to the Secretary in relation to this Bill. The penalty in the case of a natural person is a fine of \$1,000 or imprisonment for 6 months or both. In the case of a body corporate the penalty is a fine of \$5,000.

Sub-clause (3) makes it an offence to refuse or fail to attend before an officer of the Department, or answer questions, or produce documents when required to do so under this Bill. The penalty for a natural person is a \$1000 fine or imprisonment for 6 months or both, and for a body corporate a fine of \$5000.

Sub-clause (4) provides that where it is required to establish the state of mind of a body corporate in proceedings for an offence it will be sufficient to show that a director, servant or agent of the body corporate acting within his or her actual or apparent authority, had that state of mind.

Sub-clause (5) provides that any conduct engaged in by a director, servant or agent of a body corporate acting on behalf of the body corporate, or others properly authorised to act on behalf of the body corporate will be deemed to be conduct engaged in by the body corporate.

Sub-clause (6) defines a reference in sub-clause (3) to the state of mind of a person.

Sub-clause (7) provides that a person shall not be convicted in respect of the same claim for both the offence of obtaining or attempting to obtain a grant that is not payable, and the offence of lodging a claim for an excessive amount of grant. Under paragraph (b) a person shall not be convicted in respect of the same claim, for both the offence of obtaining or attempting to obtain a grant that is not payable, and the offence of providing false or misleading information under sub-clause (2) of this clause.

Under sub-clause (8) a reference to a conviction in sub-clause (7) includes an order made under Section 19B of the Crimes Act 1914.

Sub-clause (9) provides that an offence under sub-clause (1) is an indictable offence.

Sub-clause (10) allows an offence under sub-clause (1) to be dealt with in a court of summary jurisdiction, provided both defendant and prosecutor consent.

Sub-clause (11) provides that where an offence under sub-clause (1) is dealt with in a court of summary jurisdiction the penalties are to be

- for a natural person, a fine not exceeding \$2000 or imprisonment for 12 months or both; or
- for a body corporate, a fine not exceeding \$10,000.

CLAUSE 31 TIME FOR PROSECUTIONS

This clause allows prosecutions for an offence under this Bill to be brought up to three years after the perpetration of the offence.

CLAUSE 32 - RECOVERY OF GRANT ON CONVICTION

Sub-clause (1) allows a court, where a person is convicted of an offence under sub-clauses 17(1) or 30(1) or (2), to order the person to refund to the Commonwealth the amount of any grant obtained in addition to imposing a penalty.

Sub-clause (2) provides that where the court makes an order under sub-clause (1) and the court has civil jurisdiction to the extent of the amount, the order is enforceable as a final judgement.

Sub-clause (3) provides that where a court that does not have civil jurisdiction or has civil jurisdiction only for a lesser amount, makes an order under sub-clause (1), an officer of the court shall issue to the Secretary a certificate in the prescribed form, containing the prescribed particulars.

Sub-clause (4) allows the certificate issued under sub-clause (3) to be registered in a court of civil jurisdiction.

Sub-clause (5) provides that, on registration, the certificate is enforceable as a final judgement of the court.

Sub-clause (6) provides for the costs of registration of the certificate to be payable under the certificate.

CLAUSE 33 - RECOVERY OF MONEY OWING

This clause allows the Commonwealth to recover as a debt any amount a person is liable to pay under sub-clause 17(4) or clauses 20 or 26.

PART VIII - MISCELLANEOUS

CLAUSE 34 - RETURN FOR PARLIAMENT

Sub-clause (1) requires the Secretary, at the end of each financial year, to give a return to the Minister setting out

- the name of each person to whom a grant was paid;
- the amount of grant paid; and
- such other particulars as may be prescribed.

Sub-clause (2) requires the Minister to table a copy of the return in each House of Parliament within 15 sitting days of receipt of the return.

CLAUSE 35 - TRANSFER OF SHIPS BETWEEN SHIPOWNERS

Under this clause if an Australian shipowner disposes of a ship on which a grant has been paid to another Australian shipowner, the Secretary may, on application, declare that for the purposes of this Bill the purchasing shipowner will be deemed to be the shipowner to whom the grant was paid.

This provision makes it unnecessary for the grant to be repaid where the ship in question complies with the intention of this legislation (i.e. remains on the Australian register, trading in accordance with its certificate of ship category) when ship ownership changes eg as a result of a takeover or merger.

CLAUSE 36 - DELEGATION

Under sub-clause (1) the Secretary may delegate any powers under this Act to a person holding an office in the Senior Executive Service within the Department.

Sub-clause (2) deems a power exercised by the delegate to have been exercised by the Secretary.

Sub-clause (3) allows the Secretary to also exercise any powers delegated.

CLAUSE 37 - UNIFORMITY

This clause ensures that if any grant is considered a bounty under the Constitution, powers conferred by this Bill will be applied in a way that ensures that grants are uniform throughout the Commonwealth.

CLAUSE 38 - APPLICATION FOR REVIEW

Under sub-clause (1) the Administrative Appeals Tribunal (AAT) is given jurisdiction to review decisions made by the Secretary under the Bill. In particular

- whether or not a ship has been extensively modified within the meaning of clause 5
- a review of a decision to refuse to issue a category certificate or to refuse to include a particular category in a certificate made under sub-clauses 13(2) and 13(7)
- the refusal to insert additional ship categories into a category certificate under sub-clause 14(3)
- approval of a grant less than that claimed or refusal to approve payment of a grant under clause 15
- approval of an additional amount less than claimed or refusal to approve payment of an additional amount of grant under sub-clause 16(4)
- a decision that there has been an overpayment under sub-clause 17(4)
- a decision to have a valuation of a ship, or conversions to it, under clause 19
- a refusal to approve the carriage of additional crew under sub-clause 22(3)
- a refusal to approve the carriage of non-Australian resident crew members under sub-clause 22(7)
- a refusal to declare that a purchaser of a ship, in respect of which a grant has previously been paid, shall be deemed to have been paid the grant under clause 35.

Sub-clause (2) provides that in reviewing decisions to refuse to insert a category in a certificate or to refuse to approve payment of the grant sought, the AAT may review any determination of the costs of the ship or conversion of it made by the Secretary and may

- set aside the Secretary's determination of costs;
- make its own determination of costs; or
- if no determination has been made by the Secretary, make such a determination.

Sub-clause (3) provides that the word 'decision' used in sub-clause (1) has the same meaning as under the Administrative Appeals Tribunal Act 1975.

CLAUSE 39 - STATEMENT TO ACCOMPANY NOTICE OF DECISIONS

Sub-clause (1) requires the Secretary, when making one of the decisions set out in sub-clause 38(1), to issue a statement to the person affected by the decisions advising that application may be made to the AAT for a review of the decision.

Sub-clause (2) provides that a failure to provide the statement required by sub-clause (1) does not invalidate the decision.

CLAUSE 40 - SAVING OF OTHER LAWS

This clause makes it clear that this Bill does not affect the operation of the Navigation Act 1912 or any other Commonwealth or State legislation concerning the construction and seaworthiness of ships.

CLAUSE 41 - APPROPRIATION

This clause appropriates funds for grants under this Bill from the Consolidated Revenue Fund.

CLAUSE 42 - REGULATIONS

This clause provides the standard power to make regulations for the purposes of this Bill.

