

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SUBSIDY (GRAIN HARVESTERS AND EQUIPMENT) BILL 1985

EXPLANATORY MEMORANDUM

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



## SUBSIDY (GRAIN HARVESTERS AND EQUIPMENT) BILL 1985

### OUTLINE

This Bill proposes the payment during the period 21 August 1985 to 31 December 1990 of a subsidy on grain harvesters and certain parts for grain harvesters produced in Australia.

Provision is also made in Clause 11 of the Bill for a special temporary subsidy to be paid on harvesters imported and entered for home consumption in accordance with the provisions of the Customs Act 1901 before 21 August 1985 but not sold on or after that date. The current tariff on imported harvesters is to be removed effective on and from 21 August 1985. This will be proposed by way of an amendment to the Customs Tariff Act 1982.

The in-principle change in assistance arrangements for grain harvesters as proposed by this Bill was announced in broad terms by the Treasurer on 20 August 1985 in the context of the 1985/86 Budget.

The subsidy on grain harvesters produced in Australia during the subsidy period is proposed by Clause 13 of the Bill to be -

- (i) 12.5% of the sales value of the harvester if the value added to the harvester by the manufacturer is not less than 40%, or such other percentage as prescribed by regulation, of the sales value; or
- (ii) in any other case an amount equal to 25% of the value added by the manufacturer.

The subsidy on imported harvesters and equipment entered for home consumption before 21 August 1985 but not sold until on or after that date is proposed by Clause 14 to be the net amount of any applicable duties of Customs.

Applicants for the registration of premises under the Act who were not engaged in the manufacture of equipment on 21 August 1985 (the day of the Government's announcement of the subsidy arrangements) will be registered unless the Minister is of the opinion that such registration will not permit the orderly development of the Australian industry.

### Financial Impact Statement

The subsidy proposed by this Bill is estimated to cost about \$5.65 million in 1985/86 and about \$3.75 million per annum for the balance of the scheme. Total costs, including revenue foregone as a result of the related tariff change, will be of the order of 9.75 million this financial year, and 12 million thereafter.



NOTES ON CLAUSES

## PART I - PRELIMINARY

Short title

Clause 1 is a formal machinery clause.

Commencement

Clause 2 provides for the Act to be deemed to come into operation on 21 August 1985. The Treasurer announced in the context of the 1985/86 Budget that the subsidy proposed by this Act is to operate from that date.

General administration of the Act

Clause 3 provides for the Comptroller-General of Customs to have the general administration of the Act.

Interpretation

Clause 4 Sub-clause(1) defines a number of words and expressions for the purposes of the legislation, and in particular defines:

- "importer" which in relation to subsidised equipment means the person who was the beneficial owner of the equipment at the time of its arrival in Australia, or such other person as determined by the Comptroller-General of Customs to have subsequently taken over the rights of the first-named person prior to the lodgement of a claim for the payment of subsidy under this Act in respect of the equipment;
- "manufacturer" which in relation to subsidised equipment means:
  - (a) a person who at premises registered in his or her name under the Act carries out a substantial process or substantial processes in the manufacture of the equipment. Persons in Australia who only produce software, carry out design, research or development, develop or test prototypes or carry on systems engineering are not to be regarded as manufacturers;

or,

- (b) a person who arranges with another manufacturer of equipment for the carrying out at registered premises of a substantial process or substantial processes in the manufacture of the equipment;
- "subsidised equipment" to mean a subsidised harvester or subsidised harvester equipment, which constitutes the range of machinery, and parts, that is eligible for subsidy assistance under the Act. The eligible products are identified by reference to tariff items in Schedule 3 to the Customs Tariff Act 1982, and to the use of the equipment;
- "subsidy period" to mean the period commencing on 21 August 1985 and ending on the terminating date;
- "terminating day" to mean 31 December 1990 or such later day, not being a day later than 30 June 1991, as is fixed by the Minister by notice published in the Gazette before 31 December 1990.

This is a mechanism to enable the Minister to extend, for up to 6 months, the bounty assistance under the Act, to accommodate potential unforeseen delays which might arise in the process of Industries Assistance Commission reporting and Government consideration of the appropriate assistance arrangements, if any, to apply following termination of the Act;

Sub-clause (2) provides that a subsidised harvester (the equipment which is eligible for subsidy assistance under the Act) will not satisfy one of the pre-conditions of assistance (ie.-that the equipment be used in the commercial harvesting of crops) where the harvester has been used only in a demonstration for the purpose of promoting the sale of harvesters;

Sub-clause (3) deems for the purposes of this Act, the Customs Tariff Act to be amended on the same day on which a Customs Tariff alteration proposal in the Parliament to amend Schedule 3 is deemed to take effect;

Sub-clause (4) sets out the circumstances under which two persons are to be deemed associates of each other for the purposes of the Act.

Amendments of Tariff Act

Clause 5 protects manufacturers who have commenced manufacturing "subsidised" equipment from losing their eligibility for bounty through an amendment to the Tariff Act, which results in the particular goods ceasing to be classified within the tariff item nominated in the definition for "subsidised equipment";

- where the manufacture of such equipment is commenced before the day of the Tariff Act amendment, and completed after that day, the equipment will be deemed to have been completed before the relevant day, and thus eligible for bounty

Sales value

Clause 6 Sub-clause (1) deems the sales value of subsidised equipment, for the purposes of the value added formula set out in Clause 7 to ascertain the amount of subsidy payable on equipment, to be the amount ascertained in accordance with the formula  $A - (B + C + D + E + F)$  where;

- A is the ex-factory price that was charged or will be charged by a manufacturer of such equipment to "dealers" of such equipment,
- B, C, D, E, and F are various costs which are to be deducted from the above ex-factory price of subsidised equipment. Specifically excluded are;
  - . selling, distribution or delivery costs,
  - . charges and expenses associated with dealer-floor plan arrangements,
  - . discount or rebate allowances,
  - . time payment or other credit charges, and
  - . other costs as prescribed by regulation;

Sub-clauses (2) and (3) provide that where the manufacturer of subsidised equipment has not charged or does not propose to charge an ex-factory price for the equipment, or where the Comptroller-General is unable to verify that price, the Comptroller-General may determine, in writing, the sales value of that equipment for the purposes of the Act;

Sub-clause (4) permits the Comptroller-General to determine the sales value of relevant equipment where the Comptroller is satisfied the relevant price charged by the manufacturer has been influenced by an other than commercial relationship between the manufacturer and the purchaser;

Sub-clause (5) obliges the Comptroller in making determinations concerning an ex-factory price for sales value, to have regard to the lowest price charged for comparable equipment by other manufacturers or importers in Australia.

### Value added

#### Clause 7

Sub-clause (1) deems the value added to subsidised equipment by a manufacturer of the equipment, for the purposes of calculating the amount of subsidy payable on that equipment, to be the amount ascertained in accordance with the formula  $G - (H + I + J + K)$  where:

- G is the sales value of the equipment, as determined by Clause 6;
- H, I, J, and K are the various costs which are deemed not to be part of the value added by the manufacturer to the equipment in Australia. Specifically excluded is;
  - the cost of parts and materials supplied to the manufacturer for use in the manufacture or packaging of the equipment,
  - the cost of any manufacturing process carried out by the manufacturer at non-registered premises and the cost of any production services carried out by the manufacturer or by a person, on behalf of the manufacturer, outside Australia, (see also sub-clause 4(1), definition of "production service"),
  - the interest on money provided for the purpose of financing research or development outside Australia, and
  - other costs as prescribed by Regulation;



Sub-clauses (2) and (3) provide that where the costs in respect of bountiable equipment cannot be ascertained, or the Comptroller-General forms the opinion that the costs stated in subsidy claims are incorrect, overestimated or underestimated, the Comptroller-General may determine the cost of the subsidised equipment. Determinations by the Comptroller-General are reviewable by the Administrative Appeals Tribunal (sub-clause 35(2));

Sub-clause (4) permits the Comptroller-General to ignore in his or her determination of the value added to subsidised equipment by the manufacturer certain costs charged by an associate of the manufacturer which are not costs actually incurred by the associate.

#### Accounting period

Clause 8 provides that the accounting period of a manufacturer, for the purposes of the Act, is to be the 12 month accounting period of the manufacturer. If the manufacturer has no such accounting period, the accounting period for the purposes of the Act is to be the financial year.

#### Uniformity

Clause 9 prohibits the exercise of any power under the Act in a manner which would result in subsidy not being uniform throughout the Commonwealth.

### PART II - SUBSIDY

#### Specification of subsidy - manufactured subsidised equipment

Clause 10 provides for subsidy to be payable on the production in Australia of subsidised equipment, to the manufacturer or manufacturers of such equipment, provided;

#### sub-clause (3) -

- (a) all processes in the manufacture of the equipment carried out in Australia by the manufacturer are carried out at registered premises;
- (b) the last substantial process in the manufacture of the equipment was carried out at registered premises;
- (c) the manufacture of the equipment was completed during the subsidy period; and,

- (d) no components or materials used in the manufacture of the equipment have been previously used, re-conditioned or rebuilt;

Sub-clause (4) provides that subsidy is not payable on a subsidised harvester unless, during the subsidy period, the harvester;

- (a) was sold, or otherwise disposed of, for use in the harvesting of crops in Australia; or
- (b) was sold, or otherwise disposed of, to the Commonwealth;

Sub-clause (5) provides that subsidy is not to be payable on the manufacture of a subsidised harvester if, before the commencement of the Act (ie - 21 August 1985), the harvester;

- (a) was sold, or otherwise disposed of, to a person for use in the commercial harvesting of crops,
- (b) was exempt from sales tax, or
- (c) was used in the commercial harvesting of crops;

Sub-clause (6) provides that subsidy is not to be payable on the manufacture of subsidised harvester equipment (ie. parts or accessories for subsidised harvesters) if, during the subsidy period, the equipment was used or sold in the same ways outlined in sub-clause 5;

Sub-clause (7) provides that subsidy is not payable to a manufacturer on the manufacture of subsidised harvester equipment if the equipment was used by the manufacturer in the manufacture of a subsidised harvester by that manufacturer. This in effect prevents "double dipping" under the Act, ie, receiving subsidy for both parts and the actual machinery for which subsidy is payable.

Sub-clauses (8) and (9) are essentially transitional provisions, deeming subsidised equipment to have been commenced or completed on the commencement date of this Act.

#### Amount of subsidy - imported subsidised equipment

- Clause 11 sets out the conditions under which the temporary subsidy (equal to the net Customs duty - clause 14) will be payable on imported subsidised equipment. Imported harvesters, to be eligible for the subsidy, are required to have been -

imported into Australia and entered for home consumption in accordance with the Customs Act 1901 before 21 August 1985; and

sold or otherwise disposed of on or after that date to -

(i) another person for use by that person in the commercial harvesting of crops in Australia; or

(ii) the Commonwealth.

Imported subsidised equipment is also required to have been incorporated as original equipment in a subsidised harvester sold on or after that date.

#### Subsidy not payable

Clause 12 provides that subsidy is not payable under the Act to the Commonwealth, a State, or a Territory or an authority of the Commonwealth.

#### Amount of subsidy - manufactured subsidised equipment

Clause 13 sets out the rates of subsidy to be payable on subsidised harvesters and subsidised harvester equipment;

- 12 1/2% of the sales value of the harvester will be paid where the value added to the harvester by the manufacturer who completes the harvester is not less than 40% or such other prescribed percentage; or

- in any other case the amount paid will be 25% of the value added (sub-clause (1)), which is also the amount to be paid on subsidised harvester equipment or to other than manufacturers who complete the harvester (sub-clauses (2) and (3)).

#### Amount of subsidy - imported subsidised equipment

Clause 14 provides the rate of subsidy payable on subsidised equipment imported prior to 21 August 1985 and not sold until after that date. The rate of subsidy is to be the amount equal to the net appropriate customs duty paid.

Availability of subsidy

- Clause 15 provides the method of payment of subsidy where the Comptroller-General is of the opinion that the amount available for payment of subsidy in a given year will be insufficient to meet all valid claims in that year. Sub-clause (2) provides that if funds have not been appropriated by the Parliament for the purposes of the subsidy in a financial year then subsidy is not payable to a person in that year.

Good quality of subsidised equipment

- Clause 16 Provides that equipment is to be of good and merchantable quality to be eligible for the payment of subsidy:
- where the Comptroller-General declares in writing that, in his or her opinion, the equipment is not of such quality subsidy is not payable in respect of that equipment. That declaration is reviewable by the Administrative Appeals Tribunal (sub-clause 35(1)).

## PART III - PAYMENT OF SUBSIDY

Advances on account of subsidy

- Clause 17 Authorises the payment of advances on account of subsidy, on such terms and conditions as are approved by the Comptroller-General in writing (sub-clause (1)):
- where the amount of subsidy received by way of advances exceeds the amount of subsidy that subsequently becomes payable on the subsidised equipment, or where subsidy does not become payable in respect of the equipment, the amount of the excess, or the entire amount, as the case may be, is repayable to the Commonwealth (sub-clauses (2) to (4)).

Claims for payment of subsidy

- Clause 18 Sets out the procedures to be followed in claiming subsidy:
- a claimant is required to (sub-clause (2)):
    - (a) lodge a claim for subsidy on an approved form, providing such information as is and such estimates as are, required by the form,

- (b) sign and witness the form as required, and
- (c) lodge the form with a Collector for a State or Territory or the Comptroller-General within 12 months after the sale or other disposal of the subsidised equipment;
- the Comptroller-General is then obliged to examine the claim and either (sub-clause (3)):
  - (a) approve the payment of subsidy in respect of the equipment to which the claim relates, or,
  - (b) refuse to approve such payment;
  - (c) The above decisions of the Comptroller-General are reviewable by the Administrative Appeals Tribunal (clause 35(1)(b) and (c));
- the Comptroller-General is obliged to furnish the claimant with a notice in writing setting out the decision where there is a delay in processing the claim or the claim is unsuccessful (sub-clause (4)).

#### Variation of inadequate claims

- Clause 19 provides a mechanism for the variation of claims for the payment of subsidy where the claimant considers that, by reason of inadvertent error, the original claim is less than the claimant's entitlement (sub-clause (1)):
- the procedure for the lodgement of a subsequent claim for the balance of subsidy which is considered to be owing is identical to the procedures that apply to original claims for subsidy (see sub-clause 18(2) (sub-clause (2));
  - again, similar to the procedures that apply to original claims for subsidy, (see sub-clause 18(3)), the Comptroller-General is obliged to examine the further claim for subsidy and either approve or refuse the further payment of subsidy (sub-clause (4)):
    - .. The above decisions of the Comptroller-General are reviewable by the Administrative Appeals Tribunal (clause 35(1)(d) and (e)),

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

#### Variation of excessive claims

- Clause 20 Imposes an obligation on a recipient of subsidy to lodge an acknowledgement of error, within 28 days, where the recipient becomes aware that the original claim for subsidy exceeds by more than \$100 the claimant's entitlement (sub-clause (1)):
- the penalty for contravening sub-clause (1) is \$1,000,
  - the procedure for the lodgement of an acknowledgement form is similar to that governing original claims (see sub-clause 18(2)) (sub-clause (2)),
  - upon examination of the acknowledgement, where the Comptroller-General is satisfied there has been an overpayment by more than \$100, he shall cause to be served on the claimant a demand for the repayment of the amount of the overpayment (sub-clause (4)):
    - .. the decision of the Comptroller-General for the above purposes is reviewable by the Administrative Appeals Tribunal (clause 40(1)(f)).

#### Other adjustments of claims

- Clause 21 Provides that the Comptroller-General shall serve a demand for repayment of an overpayment of a claim for subsidy in excess of \$100, where the Comptroller-General discovers such an overpayment in a situation other than through an acknowledgement under clause 20:
- the decision of the Comptroller-General is reviewable by the Administrative Appeals Tribunal (clause 35).

#### Recovery of repayments

- Clause 22 Allows the Commonwealth to recover amounts owing to it (by an action in a court for a debt due) in situations where:

- a person claims subsidy which is not or does not become payable to him (clause 17), a person has overclaimed for subsidy (clause 20), or the Comptroller-General discovers an overpayment of subsidy (clause 21) (sub-clause (1));
- amounts owing to the Commonwealth by a person in any of the situations described in sub-clause (1) may be deducted from any amount that is payable to that person under the Act, and where such a deduction is made the balance which is paid will be deemed to have been the full amount (sub-clause (2)).

#### PART IV - ADMINISTRATION

##### Registration of premises

Clause 23      Sets out the requirements for the registration of premises under the Act. A pre-requisite for the payment of subsidy under the Act on the production in Australia of subsidised equipment is that the equipment is manufactured at registered premises (see clause (10)):

- registrable premises are restricted to premises that are used solely or principally for industrial or commercial purposes (sub-clause (1));
- applications for the registration of premises are to be made to the Comptroller-General in writing (sub-clause (2));
  - the Comptroller-General may require an applicant for registration to furnish such further information as he or she considers necessary and may refuse registration until such further information is provided (sub-clause (8));
- on receipt of an application for registration, the Comptroller-General shall either (sub-clause (3)):
  - register the premises and cause a notice to that effect to be served on the applicant; or
  - refuse to register the premises and cause a notice to that effect to be served on the applicant;

- .. a decision of the Comptroller-General refusing to register premises is reviewable by the Administrative Appeals Tribunal (clause 35(1)(j));
- where premises are registered, the registration shall date from the day the Notice of Registration is signed by the Comptroller-General, or such earlier day as is specified in the Notice, not being a day earlier than 21 August 1985 (sub-clause (4));
  - .. the decision of the Comptroller-General concerning the effective date of registration is reviewable by the Administrative Appeals Tribunal (clause 35(1)(h));
- a Notice of Registration is to specify whether registration is in respect of all subsidised equipment or restricted to a specified class of subsidised equipment and may specify the period of registration (sub-clause (5));
- regulations may prescribe conditions to be complied with in connection with the manufacture of subsidised equipment at registered premises (sub-clause (6));
  - . if the conditions prescribed are not or will not be complied with, the Comptroller-General shall not register the premises (sub-clause (7));
- the registration of premises which were not engaged in the manufacture of subsidised equipment prior to 21 August 1985 (that is, the date of the Government's announcement) will be permitted unless the Minister informs the Comptroller-General that the registration of the premises will not permit the orderly development in Australia of the industry manufacturing subsidised equipment (sub-clause (9));
- registrations may be transferred on the submission of a joint application to the Comptroller-General and shall take effect not earlier than 6 months before the day on which the application for the transfer was made (sub-clauses (10) and (11));



- . a decision of the Comptroller-General transferring, or refusing to transfer the registration of premises is reviewable by the Administrative Appeals Tribunal (clause 35(1)(k));

the Comptroller-General may cancel the registration of premises where he or she becomes satisfied that any one of the following applies (sub-clause (12)):

- (a) subsidised equipment is not being manufactured at the premises;
- (b) subsidised equipment of the class for which the premises are registered is not being manufactured at the premises;
- (c) the manufacture of subsidised equipment is being carried on by someone other than the person in whose name the premises are registered;
- (d) the manufacture is not being carried out in accordance with prescribed conditions; or
- (e) the premises are not being used solely or principally for industrial or commercial purposes;

- .. a decision of the Comptroller-General cancelling the registration of premises is reviewable by the Administrative Appeals Tribunal (clause 35(1)(m)).

## Accounts

Clause 24 makes eligibility for subsidy conditional upon the maintenance of appropriate commercial records. Such records are required to be:

- kept in writing in the English language (or be readily accessible and convertible into writing in the English language (sub-clause (2)); and
- retained for at least 3 years after the date of lodgement of a claim for subsidy pursuant to clause 18 (sub-clause (1)).

Securities

Clause 25 confers upon the Comptroller-General the power to require a person to whom subsidy could become payable to give security for compliance with the Act and regulations. Payment of subsidy may be withheld until the required security is given:

- a decision of the Comptroller-General requiring a person to give a security is reviewable by the Administrative Appeals Tribunal (clause 35(1)(n)).

Appointment of authorised officers

Clause 26 empowers the Comptroller-General to appoint officers of the Australian Customs Service as authorised officers upon whom administrative functions may be conferred for the purposes of the Act.

Stock-taking and inspection of production and accounts, etc

Clause 27 empowers an authorised officer to enter premises, inspect or take stock of any subsidised equipment, inspect any process in the manufacture of any subsidised equipment, inspect and take copies of accounts, books, documents and other records involving such subsidised equipment (sub-clause (1)):

- if the occupier or person in charge of registered premises fails to provide the authorized officer with all reasonable facilities and assistance he or she is liable to a penalty of \$1,000 (sub-clause (2)).

Power to require persons to answer questions and produce documents

Clause 28 empowers a Collector or an authorized officer to require certain persons to attend before him or her to answer questions and produce documents in relation to the manufacture or importation of subsidised equipment, and provides for the withholding of subsidy payments until the requirements of this clause are met. The Collector or an authorized officer must believe on reasonable grounds that the person is capable of giving information relevant to the operation of the Act. Persons who are capable of giving such information may in the case of this Act be persons who purchased the equipment from the manufacturer. However, the purchase of equipment from a manufacturer in itself would not be sufficient ground to require a purchaser to provide information;

Sub-clause (3) provides that where a person produces records prepared by another pursuant to a notice under sub-clause (1), which are known by the first person to be false or misleading, that first person shall be guilty of an offence, punishable by a fine of \$1,000 or imprisonment for 6 months, or both, for not disclosing that fact;

Sub-clause (5) prevents the use, in criminal proceedings against a person, except under sub-clause (3) or paragraph 30(3)(a) of the Act, of self-incriminating answers given and documents produced by that person pursuant to this section.

#### Power to examine on oath, etc

Clause 29 provides the power for a Collector or an authorized officer to examine, on oath or affirmation, persons attending before him or her.

#### Offences

Clause 30 creates offences for:

- refusing or failing to attend before a Collector or an authorized officer, to take an oath or make an affirmation, to answer questions or produce documents when so required under the Act (sub-clause (1)) (penalty \$1,000);
- obtaining or attempting to obtain subsidy that is not payable (sub-clause (2)) - penalty \$2,000 or imprisonment for 12 months or both); and
- presenting certain records or making certain statements that are known to be false or misleading in a material particular (sub-clause (3)) - penalty \$1,000 or imprisonment for 6 months, or both);

Sub-clause (4) prevents a person being convicted twice for offences in respect of the same claim for subsidy where those offences are against both sub-clause (2) and sub-clause 20(1), or against both sub-clause (2) and sub-clause (3).

Sub-clause (5) provides that where a Court is satisfied a charge against a person is proven, but does not proceed to a conviction, the order of the Court under section 19B of the Crimes Act 1914 is considered to be a conviction for the purposes of sub-clause (4).

Time for prosecutions

Clause 31 limits the commencement of prosecutions for offences against the Act to within 3 years after the commission of the offence.

Recovery of subsidy on conviction

Clause 32 empowers a court to order a person convicted of an offence under sub-clauses 20(1) or 30(2) or (3) to refund to the Commonwealth the amount of subsidy wrongfully obtained, in addition to imposing the penalty prescribed in those sub-clauses against that person (sub-clause (1))

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

PART V - MISCELLANEOUS

Return for Parliament

Clause 33 provides for the furnishing by the Comptroller-General to the Minister (sub-clause (1)), and the tabling in Parliament by the Minister (sub-clause (2)), of returns in relation to the payment of subsidy.

Delegation

Clause 34 provides powers of delegation for the Minister, to officers of the Australian Customs Service or persons holding or performing duties in the Department of Industry, Technology and Commerce. The Comptroller-General has a power of delegation for the purposes of this Act pursuant to the Customs Administration Act 1985.

Application for review

Clause 35 provides a right to apply to the Administrative Appeals Tribunal for review of specified administrative decisions affecting the rights or entitlements of persons under the Act.

Statement to accompany notice of decisions

Clause 36 requires persons whose interests are affected by administrative decisions of a kind referred to in clause 35 to be notified of their right to have such decisions reviewed by the Administrative Appeals Tribunal.

Money to be appropriated

Clause 37 Provides for payments of subsidy and advances on account of subsidy to be made out of money appropriated by the Parliament.

Transitional

Clause 38 provides that the penal provisions of this Act do not operate prior to the day on which the Act receives the Royal Assent.

Regulations

Clause 39 provides the power to make regulations for the purposes of the Act.





