

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SUBSIDY (CULTIVATION MACHINES AND EQUIPMENT) BILL 1986

EXPLANATORY MEMORANDUM

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

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NOTES OF CLAUSESPART I - PRELIMINARYShort title

Clause 1 is a formal machinery clause.

Commencement

Clause 2 provides for the Act to be deemed to have come into operation on 15 April 1986, the date of the Government's Rural Economic Policy Statement.

General administration of 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", to mean, in relation to subsidised equipment, the person who was the beneficial owner of the equipment at the time of its arrival in Australia, or such other person as is 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 the subsidy under this Act in respect of the equipment;
- "manufacturer" to mean, in relation to subsidised equipment:
 - (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; or,

(c) a person who carries on the business of trading in subsidised equipment and who acquired ownership of equipment pursuant to a firm order placed prior to the commencement of this Act under arrangements known as "Original Equipment Manufacture" or OEM agreements.

- "subsidised equipment" to mean a subsidised cultivation machine or subsidised cultivation equipment, which constitutes the range of machinery and parts that are 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 for farm related activities;
- "subsidy period" to mean the period commencing on 15 April 1986 and ending on the terminating day;
- "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 the assistance under the Act, for up to 6 months, 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 cultivation machine (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 commercial agriculture) where the machine has been used only in a demonstration for the purpose of promoting the sale of such machines;

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.

Effect of amendments of Tariff Act

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

- where the manufacture of such equipment is commenced before the day of the Customs 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 subsidy.

Sales Value

Clause 6 Sub-clause (1) deems the sales value of equipment, being subsidised equipment or equipment used in the manufacture of subsidised equipment (for the purpose of calculating the amount of subsidy payable on subsidised equipment) to be the amount ascertained in accordance with the formula $A - (B + C)$ 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 and C are the various costs which are to be deducted from the above ex-factory price of subsidised equipment. Specifically excluded are;
 - freight costs in respect of delivery from the premises where the last substantial manufacturing process was carried out, 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, when 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.

Accounting period

Clause 7 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 8 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 9 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 cultivation machine unless, during the subsidy period, the machine

- (a) was sold, or otherwise disposed of, for use in Australia; or
- (b) was sold, or otherwise disposed of, to the Commonwealth; or
- (c) was prepared for sale by the manufacturer, held in the manufacturer's stock and listed in the manufacturer's inventory of stock.

sub-clause (5) provides that subsidy is not to be payable on the manufacture of a subsidised cultivation machine if, before the commencement of the Act (i.e. - 15 April 1986), the machine;

- (a) was sold, or otherwise disposed of, to a person for use in commercial agriculture, or
- (b) was used in commercial agriculture.

sub-clause (6) provides that subsidy is not payable on subsidised cultivation equipment (ie parts or accessories for subsidised cultivation machines) unless, during the subsidy period, the equipment was sold, disposed of, or prepared for sale in the same ways outlined in sub-clause (4), or the equipment was used by the manufacturer in Australia in connection with the repair or servicing of subsidised equipment.

sub-clause (7) provides that subsidy is not payable to a manufacturer on the manufacture of subsidised cultivation equipment if the equipment was used by the manufacturer in the manufacture of a subsidised cultivation machine 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 the manufacture of subsidised equipment to have been commenced or completed on the commencement date of this Act, ie, 15 April 1986, in order to ensure that such equipment becomes eligible for assistance under the Act. The rate of assistance for equipment actually manufactured prior to 15 April 1986 is set out in sub-clause 12(1).

Specification of subsidy - imported subsidised equipment

Clause 10 sets out the conditions under which subsidy (equal to the net Customs duty - clause 13) will be payable on imported subsidised equipment, to the importer of the equipment. To be eligible for the subsidy, such equipment is required to have been -

- imported into Australia and entered for home consumption in accordance with the Customs Act 1901 before 15 April 1986; (sub-clause (1));
- and
- sold or otherwise disposed of on or after that date (sub-clause (3)) to;
 - (i) another person for use by that person in commercial agriculture,
 - (ii) the Commonwealth,
 - (iii) for use by a manufacturer in Australia as original equipment in the manufacture of subsidised cultivation machinery and the machinery was, during the subsidy period, sold, or otherwise disposed of to -
 - . a person who carries on the business of trading in subsidised equipment,
 - . a person for use in commercial agriculture, or
 - . to the Commonwealth, or
 - (iv) for use in Australia in the service or repair of subsidised cultivation machinery.
- Subsidy is not payable under this section in respect of the importation of subsidised equipment if, before 15 April 1986, the equipment was -
 - (a) sold or otherwise disposed of to a person for use by that person in commercial agriculture; or
 - (b) used in commercial agriculture. (sub-clause(4));

Subsidy not payable

Clause 11 Sub-clause (1) provides that subsidy is not payable under the Act to the Commonwealth, a State, or a Territory or an authority of the Commonwealth.

Sub-clause (2) further provides that subsidy is not payable on equipment on which bounty has or will become payable under the Subsidy (Grain Harvesters and Equipment) Act 1985.

Amount of subsidy - manufactured subsidised equipment

Clause 12 Sub-clause (1) sets out the rate of subsidy payable in respect of the production of subsidised equipment prior to 15 April 1986, as an amount equal to 10% of the sales value of the equipment (i.e. - the ex-factory selling price).

Sub-clause (2) sets out the rate of subsidy payable in respect of the production of subsidised equipment, on or after 15 April 1986, as

- an amount equal to 10% of the sales value of the equipment (i.e. - the ex-factory selling price), less

 . the amount, if any, of any bounty or subsidy paid or payable under another Act on locally produced parts or equipment incorporated in the subsidised equipment and

 . an amount equal to a notional tariff of 12% of the value for duty on any imported parts or equipment incorporated in the subsidised equipment. This calculation is designed to ensure that imported parts or equipment (which enter duty-free) are not given additional assistance, as against locally-produced parts, etc., when incorporated in subsidised equipment.

Amount of subsidy - imported subsidised equipment

Clause 13 provides that the rate of subsidy payable on subsidised equipment imported prior to 15 April 1986 and not sold until after that date is to be an amount equal to the net appropriate Customs duty paid or payable on the equipment.

Availability of subsidy

Clause 14 Sub-clause (1) provides for 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 15 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 (paragraph 35(1)(b)).

PART III - PAYMENT OF SUBSIDY

Advances on account of subsidy

Clause 16 authorises the payment of advances on account of subsidy, on such terms and conditions as are approved by the Comptroller 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 goods, or where subsidy does not become payable in respect of the goods, 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 17 sets out the procedures to be followed in claiming subsidy:

- a claimant is required to (sub-clause (3));
 - lodge a claim on an approved form providing such information as is, and such estimates as are, required by the form;

sign and witness the form as required by proposed section 21 and

lodge the form with a Collector for a State, or with the Comptroller, within 12 months after the day on which the last condition for the payment of subsidy in respect of those goods became satisfied;

.. a claim may not be made for an amount of subsidy that is less than \$200, or such other amount as may be prescribed
(sub-clause (2))

- the Comptroller is then obliged to examine the claim and either (sub-clause (4));

approve in writing the payment of the amount, or

where the amount is different from the amount for which the claim was made, with the difference being less than \$50, and the Comptroller is satisfied the difference is not attributable to the person deliberately overclaiming or underclaiming the amount of subsidy, the Comptroller shall approve, in writing, the payment of the amount claimed, or

refuse, in writing to approve such payment;

the decisions of the Comptroller to approve or refuse the payment of subsidy are reviewable by the Administrative Appeals Tribunal (paragraphs 35(1) (c) and (d));

- the Comptroller is obliged to provide to the claimant a notice 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 inadequate claims

Clause 18 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-section (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 17(2) (sub-clause (2)));
- again, similar to the procedures that apply to original claims for subsidy, (see sub-clause 17(3), the Comptroller is obliged to examine the further claim for subsidy and either approve or refuse the further payment of subsidy (sub-clause (4));
 - . the decisions of the Comptroller are reviewable by the Administrative Appeals Tribunal (paragraph 35(1) (e) and (f));
- the Comptroller is obliged to furnish the claimant with a notice in writing setting out the decision where there is a delay in the processing of the claim or the claim is unsuccessful (sub-section (5));

Variation of excessive claim

- Clause 19 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, for a natural person, or \$5000 for a body corporate
 - the procedure for the lodgement of an acknowledgement form is similar to that governing original claims (see sub-clause 17(2)) (sub-clause 2),
 - upon examination of the acknowledgement, where the Comptroller is satisfied there has been an overpayment by more than \$100, he or she 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 for the above purposes is reviewable by the Administrative Appeals Tribunal (paragraph 35(1)(g)).

Other adjustments of claims

- Clause 20 provides that the Comptroller shall serve a demand for the repayment of an overpayment of a claim for subsidy in excess of \$100, where the Comptroller discovers such an overpayment in a situation other than through an acknowledgement under clause 19 (sub-clause 1);
- the above decision of the Comptroller is reviewable by the Administrative Appeals Tribunal (paragraph 35(1)(h)),
 - where the amount of an overpayment referred to in sub-clause 1 is less than \$25,000 and the Comptroller is satisfied that
 - . the overpayment was due to an error that did not involve any failure on the part of the person who lodged the claim to comply with the Act or the regulations and, repayment of the overpayment would be unreasonable, or cause that person undue hardship, or,
 - . the cost of endeavouring to recover the overpayment is so high and the amount likely to be recovered as a result of endeavouring to recover the overpayment is so low that taking action to recover the overpayment would not be justified,
 the Comptroller may refrain from causing a demand to be served (sub-clause (2));
 - where the Comptroller elects not to proceed for a repayment, particulars of the relevant amount shall be included in the annual return for Parliament (clause 33) for the year in which the Comptroller so acted (sub-clause (3)).

Forms

- Clause 21 prescribes the conditions for the signing and witnessing of the various forms which are required to be lodged pursuant to the Act. Authorised persons will be permitted to submit claims or lodge returns on behalf of the legal claimant (be that claimant a natural person or a body corporate), which should assist claimants, and expedite the processing of claims by the Australian Customs Service.

Recovery of repayments

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

- a person claims subsidy by way of an advance which is not or does not become payable to him (clause 16) a person has overclaimed for subsidy (clause 19), or the Comptroller-General discovers an overpayment of subsidy (clause 20) (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 (sub-clause (9)):

- 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 (7));
- 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)(k));
- 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 15 April 1986 (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)(j));
- regulations may prescribe conditions to be complied with in connection with the manufacture of subsidised equipment at registered premises (sub-clause (5));
- . if the conditions prescribed are not or will not be complied with, the Comptroller-General shall not register the premises (sub-clause (6));
- the registration of premises which were not engaged in the manufacture of subsidised equipment prior to 15 April 1986 (the date of the commencement of this Act) 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 (8));
- 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 (9) and (10));

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)(m));

- the Comptroller-General may cancel the registration of premises where he or she becomes satisfied that any one of the following applies (sub-clause (11)):
 - (a) subsidised equipment is not being manufactured at the premises;
 - (b) the manufacture of subsidised equipment is being carried on by someone other than the person in whose name the premises are registered;
 - (c) the manufacture is not being carried out in accordance with prescribed conditions; or
 - (d) the premises are not being used solely or principally for industrial or commercial purposes;
- .. a decision of the Comptroller-General cancelling the registration of premises is reviewable by the Administrative Appeals Tribunal (clause 35(1)(n)).

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 17 (sub-clause (1)).

Securities

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

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

Appointment of authorised officers

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

Stocktaking and inspection of production and accounts, etc

Clause 27 empowers an authorised officer to enter registered premises, or premises when there is stored subsidised equipment, to inspect any subsidised equipment, any process in the manufacture of subsidised equipment and, the accounts, books, documents or other records relating to the manufacture or importation of such equipment, and take copies of any such records (sub-clause (1))

- if the occupier or person in charge of the registered premises fails to provide the authorised officer with all reasonable facilities and assistance, he or she is liable to a penalty of \$1000 or, in the case of a body corporate, \$5000 (sub-clause 2).

Power to require persons to answer questions and produce documents

Clause 28 empowers a Collector or an authorised 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 authorised officer must believe on reasonable grounds that the person is capable of giving information relevant to the operation of the Act (sub-clause (1));

- sub-clause (3) creates an offence for not disclosing that records prepared by one person and produced by another person in pursuance of a notice under sub-clause (1) are false or misleading, where the latter person knows them to be false or misleading;

Penalty for breach - \$1000, or 6 months imprisonment or both (natural person) or \$5000 (body corporate)

- 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.

Power to examine on oath, etc

Clause 29 provides for a Collector or an authorised 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 authorised officer, or to take an oath or make an affirmation, or to answer questions or produce documents when so required pursuant to this Act (sub-clause (1));
 - . Penalty \$1000, or 6 months imprisonment or both (natural person) and \$5000 (body corporate)
- obtaining or attempting to obtain subsidy that is not payable (sub-clause (2))
 - . Penalty - fine not exceeding \$10,000 or imprisonment for five years, or both (natural person) and a fine not exceeding \$50,000 (body corporate)
 - . this offence is an indictable offence, which may be heard and determined in a court of summary jurisdiction if the court is satisfied it is proper to do so, and the defendant and prosecutor consent (sub-clauses (9) and (10));
 - .. where a Court of Summary jurisdiction convicts a person of an offence under sub-section (2) the penalties that the court may impose are \$2000 or imprisonment for 12 months, or both (natural person) or \$10,000 (body corporate) (sub-clause (11));
- knowingly making statements, orally or in writing, that are false or misleading in a material particular, or presenting an account, book or document that is to the knowledge of the person false or misleading in a material particular (sub-clause (3));

Penalty, \$1000 or imprisonment for 6 months, or both (natural person) and \$5000 (body corporate).

where, in proceedings for an offence against sub-sections (2) or (3),

it is necessary to establish a state of mind on the part of a corporation, it is sufficient to show that a director, servant or agent acting within the scope of his or her actual or apparent authority had that state of mind (sub-clause (4));

any conduct so engaged in by the director, servant or agent (or any other person at the direction of a director, servant or agent) is deemed to have also been engaged in by the corporation (sub-clause (5));

Time for prosecutions

Clause 31 provides that proceedings for offences against this Act are to commence 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 19(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 to the Minister (sub-clause (1)), and the tabling in Parliament by the Minister (sub-clause (2)), of annual returns in relation to the amounts of subsidy paid during the year pursuant to the Act.

Delegation

Clause 34 provides powers of delegation for the Minister. The Comptroller has a power of delegation for the purposes of this Act by virtue of the Customs Administration Act 1985 (Section 14).

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 an administrative decision of a kind referred to in clause 35 to be notified of the rights of review of those decisions 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 standard power to make regulations for the purposes of the Act.

