



Bounty (Berry Fruits) Act 1982

No. 132 of 1982

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Bounty (Berry Fruits) Act 1982

No. 132 of 1982

An Act to provide for the payment of bounty on the production of certain berry fruits

[Assented to 14 December 1982]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Bounty (Berry Fruits) Act* 1982.

Commencement

2. This Act shall be deemed to have come into operation on 1 July 1982.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“authorized officer” means an officer who is an authorized officer for the purposes of this Act by virtue of an appointment under section 16;
“bountiable fruit” means fresh fruit, being—
 - (a) bilberries;
 - (b) blackcurrants;

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- (c) blackberries;
- (d) blueberries;
- (e) boysenberries;
- (f) cranberries;
- (g) elderberries;
- (h) gooseberries other than chinese gooseberries;
- (j) loganberries;
- (k) mulberries;
- (m) myrtleberries;
- (n) raspberries;
- (p) redcurrants;
- (q) rowanberries;
- (r) strawberries;
- (s) whitecurrants;
- (t) youngberries; or
- (u) any other kind of soft edible stoneless berry fruit other than—
 - (i) figs;
 - (ii) grapes;
 - (iii) jackfruit;
 - (iv) jujubes;
 - (v) juniper berries;
 - (vi) lychees; or
 - (vii) rose hips,

that the Minister, by notice published in the *Gazette*, declares to be fruit to which this Act applies;

“bounty” means bounty under this Act;

“bounty period” means the period commencing on 1 July 1982 and ending on 30 June 1987 or on such later date as is fixed by the Minister, by notice published in the *Gazette* before 30 June 1987, as the date after which bounty is not to become payable under this Act;

“Collector” has the same meaning as in the *Customs Act* 1901;

“Comptroller-General” means the Comptroller-General of Customs;

“fresh fruit” includes fruit that has been chilled but does not include fruit that has been frozen;

“processing”, in relation to fresh fruit, means processing—

- (a) that consists of, or includes—
 - (i) freezing, cooking, pulping or juicing fruit; or
 - (ii) doing any other act or thing to fruit the doing of which so changes the nature of fruit that it cannot be re-constituted or used as fresh fruit (other than de-stalking fruit), being an act or thing that the Minister, by notice published in the *Gazette*, declares to

be an act or thing to which this sub-paragraph applies;
and

(b) that involves the use of a significant amount of commercial equipment;

“processor”, in relation to bountiable fruit, means a person who in the course of carrying on the business in Australia of processing bountiable fruit, completes the carrying out of the first or only process to which the bountiable fruit is subject;

“producer”, in relation to fruit, means the person who owns the fruit immediately before it is picked or harvested and, for the purposes of this definition, a person who has rights in the nature of an equity of redemption in respect of fruit the subject of a mortgage or other security shall be deemed to be the owner of the fruit;

“registered premises” means premises registered by the Minister under section 13.

(2) Where a person is both the producer and the processor of bountiable fruit he shall be deemed, for the purposes of this Act, to have provided the fruit to himself for processing.

(3) A reference in a provision of this Act to an approved form is a reference to a form approved, by instrument in writing, by the Comptroller-General for the purposes of the provision.

Uniformity

4. A power conferred on the Minister or the Comptroller-General by this Act shall not be exercised in such a manner that bounty under this Act would not be uniform throughout the Commonwealth within the meaning of paragraph 51 (iii) of the Constitution.

Specification of bounty

5. (1) Bounty is payable in accordance with this Act on the production in Australia of bountiable fruit.

(2) Bounty in respect of bountiable fruit is payable to the producer of the bountiable fruit.

(3) A producer of bountiable fruit is not entitled to receive a payment of bounty in respect of bountiable fruit unless the Comptroller-General is satisfied that—

- (a) the fruit was produced in the course of carrying on the business in Australia of cultivating bountiable fruit;
- (b) the fruit was harvested or picked during the bounty period; and
- (c) a processor completed the carrying out of the first or only process to which the fruit is subject at registered premises during the bounty period.

Amount of bounty

6. (1) The amount of bounty payable to a producer of bountiable fruit is \$100 per tonne of bountiable fruit provided to the processor of the bountiable fruit.

(2) For the purposes of sub-section (1), the weight of bountiable fruit shall be calculated at the time at which the fruit is received at the premises of the processor.

Bounty not payable in respect of certain fruit

7. (1) Bounty is not payable in respect of any bountiable fruit produced by the Commonwealth, a State or an authority of the Commonwealth or of a State (including an educational or research institution established by the Commonwealth or a State).

(2) In this section, "State" includes the Northern Territory.

Good quality essential

8. Bounty is not payable in respect of bountiable fruit unless the Comptroller-General is satisfied that the bountiable fruit is of good and merchantable quality.

Processors to furnish returns

9. (1) Within 21 days after the end of each month, the processor of bountiable fruit shall, by notice in writing in accordance with the appropriate approved form, served either personally or by post on—

(a) the Collector for the State or Territory in which the fruit is processed;
or

(b) if there is no such Collector—the Comptroller-General,

furnish such information and calculations in relation to the bounty becoming payable in accordance with this Act in respect of bountiable fruit processed by the processor during that month as is required by that form to be furnished.

Penalty: \$1,000.

(2) A processor of bountiable fruit shall not—

(a) refuse or fail to comply with sub-section (1) to the extent that he is capable of complying with it; or

(b) in purported compliance with sub-section (1), furnish information that is, or calculations that are, to his knowledge, false or misleading in a material particular.

Penalty: \$1,000.

(3) Where a processor of bountiable fruit has duly furnished information and calculations in accordance with sub-section (1), the Comptroller-General shall, after examining that information and those calculations and causing such inquiries as he thinks necessary to be made (including inquiries under section 17 or 18)—

(a) if he is satisfied that bounty in respect of the bountiable fruit is payable, approve the payment of the bounty; or

(b) if he is not so satisfied—refuse to approve payment of the bounty.

(4) Where the Comptroller-General makes a decision under sub-section (3) approving, or refusing to approve, payment of bounty to a producer of bountiable fruit, he shall cause to be served on the producer, and on the processor of the fruit, either personally or by post, a notice in writing setting out that decision.

Processors to keep accounts, books, &c.

10. (1) A processor of bountiable fruit shall—

- (a) keep such accounts, books, documents and other records as correctly record and explain such particulars relating to—
 - (i) the provision of bountiable fruit to, and the disposal of bountiable fruit by, the processor; and
 - (ii) the processing of bountiable fruit by the processor, as are prescribed; and
- (b) so keep his accounts, books, documents and other records as to enable the information and calculations referred to in sub-section 9 (1) to be furnished.

(2) A processor of bountiable fruit shall retain his accounts, books, documents and other records kept in accordance with sub-section (1) for at least 2 years after the processing of the bountiable fruit concerned.

(3) The accounts, books, documents and other records referred to in sub-section (1) shall be kept in writing in the English language or in a form in which they are readily accessible and readily convertible into writing in the English language.

Penalty: \$1,000.

Authorization of processor as producer's agent

11. A producer of bountiable fruit may, by notice in writing furnished to the Comptroller-General, authorize a specified processor of bountiable fruit to act as his agent for the purpose of receiving bounty on his behalf, and such an authorization may be given effect to for the purposes of this Act.

Claims lodged with Comptroller-General

12. (1) A producer of bountiable fruit who claims to be entitled to be paid an amount of bounty in respect of bountiable fruit may, if he has not received payment of that amount within the period of 4 months after the date on which the fruit was alleged to have been picked or harvested, lodge a claim in accordance with the appropriate approved form within the period of 12 months after that date with the Comptroller-General for payment to him of the amount.

(2) A claim lodged with the Comptroller-General under sub-section (1) shall be accompanied by such information as is required by the approved form to be furnished.

(3) The approved form may require any information that a person making a claim is required to furnish to be verified by a statutory declaration.

(4) As soon as is practicable after receipt of a claim in respect of bountiable fruit, the Comptroller-General shall, after examining that claim and causing such inquiries as he thinks necessary to be made (including inquiries under section 17 or 18)—

- (a) if he is satisfied that the claimant is entitled to a payment of bounty in respect of that fruit under this Act—approve the payment of the bounty; or
- (b) if he is not so satisfied—refuse to approve payment of the bounty.

(5) Where the Comptroller-General makes a decision under sub-section (4) approving, or refusing to approve, payment of bounty to a producer of bountiable fruit, he shall cause to be served on the producer and on the processor of the fruit, either personally or by post, a notice in writing setting out that decision.

Registration of premises

13. (1) The regulations may prescribe conditions to be complied with, for the purposes of this Act, in connection with the carrying out at registered premises of any processing of bountiable fruit.

(2) Where a person carries out, or proposes to carry out, at any premises in Australia any processing of bountiable fruit, the Minister may—

- (a) of his own motion; or
- (b) upon application to do so being made to him by the person,

register those premises for the purposes of this Act.

(3) If conditions have been prescribed under sub-section (1), the Minister shall not register the premises unless he is satisfied that those conditions have been, or will be, complied with.

(4) The Minister may require an applicant to furnish such information as the Minister considers necessary for the purposes of this Act, and may refuse to register the premises until the information is furnished to his satisfaction, but nothing in this sub-section limits the powers conferred by section 17 or 18.

(5) The Minister shall not register premises unless, in his opinion, processing of bountiable fruit is, or is proposed to be, carried out at the premises.

(6) If the Minister so determines, the registration shall be deemed to have taken effect on and from such date, being a date not earlier than 1 July 1982, as is specified by the Minister.

- (7) Where the Minister is satisfied, in respect of any registered premises—
 - (a) that no processing of bountiable fruit is being carried out at the premises;

- (b) that no processing of bountiable fruit is being carried out at the premises by the person who applied for the registration of the premises; or
- (c) if any conditions have been prescribed under sub-section (1), that processing of bountiable fruit is being carried out at the premises otherwise than in accordance with those conditions,

the Minister may, by notice in writing served either personally or by post on the occupier of the premises, and, if a person other than the occupier applied for the registration of the premises, on that person, cancel the registration of the premises.

(8) For the purpose of the application of section 29 of the *Acts Interpretation Act* 1901 to the service by post of a notice under sub-section (7) of this section, such a notice posted as a letter addressed to the occupier, or to the person who applied for the registration of the premises, at the registered premises shall be deemed to be properly addressed.

Accounts, &c.

14. A person is not entitled to bounty unless—

- (a) he keeps such accounts, books, documents and other records as correctly record and explain—
 - (i) such particulars relating to the production or the sale or other disposal (including provision to a processor) of fruit in respect of which bounty is, or may become, payable as are specified by the Minister in a notice published in the *Gazette*; and
 - (ii) such other particulars (if any) in relation to that fruit as are specified by the Minister by notice in writing served, either personally or by post, on the person; and
- (b) he retains those accounts, books, documents and other records for at least 2 years after the picking or harvesting of the fruit concerned.

Securities

15. The Minister may by notice in writing served, either personally or by post, on a person to whom bounty could become payable, require the person to give security, in an amount determined by the Minister, by bond, guarantee or cash deposit, or by all or any of those methods, for compliance by him with the provisions of this Act and the regulations, and where a person is so required to give security, he is not entitled to bounty unless he gives security in accordance with the requirement.

Appointment of authorized officers

16. (1) The Minister may, by writing signed by him, appoint—

- (a) a specified officer;
- (b) the officer for the time being holding, or performing the duties of, a specified office; or
- (c) officers included in a specified class of officers,

to be an authorized officer, or authorized officers, for the purposes of this Act.

(2) In this section, “officer” means an officer of the Department of Industry and Commerce.

Stock-taking and inspection of production and accounts, &c.

17. (1) For the purposes of this Act, an authorized officer may, at all reasonable times, enter—

- (a) registered premises;
- (b) premises where there is bountiable fruit (including fruit that has been processed or fruit that has not been picked or harvested) in respect of which bounty is payable, or, in the opinion of the authorized officer, is likely to become payable; or
- (c) premises where there are kept any accounts, books, documents or other records relating to the production, sale or other disposal (including provision to a processor), or processing or other use, of bountiable fruit (including fruit that has been processed),

and may—

- (d) inspect or take stock of any bountiable fruit (including fruit that has been processed);
- (e) inspect any processing of any bountiable fruit; and
- (f) inspect the accounts, books, documents or other records relating to the production, sale or other disposal (including provision to a processor), or processing or other use, of bountiable fruit (including fruit that has been processed),

and may make and retain copies of, or take and retain extracts from, any such accounts, books, documents or other records.

(2) The occupier or person in charge of registered premises, or of premises referred to in paragraph (1) (b) or (c), shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under this section.

Penalty: \$1,000.

Power to require person to answer questions and produce documents

18. (1) A Collector or an authorized officer may, by notice signed by him, require a person whom he believes to be capable of giving information relevant to the operation of this Act in relation to the production, sale or other disposal (including provision to a processor), or processing or other use of bountiable fruit to attend before him at a time and place specified in the notice and there to answer questions and to produce to him such accounts, books, documents and other records in relation to the production, sale or other disposal (including provision to a processor), or processing or other use of bountiable fruits as are referred to in the notice.

(2) A Collector or an authorized officer may make copies of, or take extracts from, any accounts, books, documents or other records produced in pursuance of this section.

(3) A person is not excused from answering a question or producing any accounts, books, documents or other records when required so to do under this section on the ground that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate him or make him liable to a penalty, but his answer to any such question or the production by him of any such account, book, document or other record is not admissible in evidence against him in proceedings other than proceedings for an offence against paragraph 20 (1) (c) or sub-section 20 (3).

(4) Where a producer of bountiable fruits, or a person employed by a producer, has failed to attend or to answer a question, or to produce any account, book, document or other record, when required so to do under this section, bounty is not payable to the producer, unless the Minister otherwise directs, until the producer or that person has attended, answered the question or produced the account, book, document or other record, as the case may be.

Power to examine on oath, &c.

19. (1) A Collector or an authorized officer may examine, on oath or affirmation, a person attending before him in pursuance of section 18 and, for that purpose, may administer an oath or affirmation to that person.

(2) The oath or affirmation to be made by a person for the purposes of sub-section (1) is an oath or affirmation that the answers he will give to questions asked him will be true.

Offences

20. (1) A person shall not, without reasonable excuse, refuse or fail—

- (a) to attend before a Collector or an authorized officer;
- (b) to take an oath or make an affirmation; or
- (c) to answer a question or produce an account, book, document or other record,

when so required in pursuance of this Act.

Penalty: \$1,000.

(2) A person shall not knowingly obtain or attempt to obtain bounty that is not payable.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(3) A person shall not, for the purposes of, or in connection with, this Act, make a statement, either orally or in writing, that is to his knowledge false or misleading in a material particular.

Penalty: \$1,000.

(4) Where a person is convicted of an offence against sub-section (2) or (3), the court may, in addition to imposing a penalty under that sub-section, order the person to refund to the Commonwealth the amount of any bounty wrongfully obtained by him.

(5) Where a court has made an order under sub-section (4), a certificate signed by the appropriate officer of the court specifying the amount ordered to be refunded and the person by whom the amount is payable may be filed in a court having civil jurisdiction to the extent of that amount and is thereupon enforceable in all respects as a final judgment of that court.

Return for Parliament

21. (1) The Comptroller-General shall, as soon as practicable after the end of each financial year in which bounty is paid, furnish to the Minister a return setting forth—

- (a) the name and address of each person to whom bounty was paid in that financial year;
- (b) the amount of bounty paid to each person in that financial year; and
- (c) such other particulars (if any) as are prescribed.

(2) The Minister shall cause a copy of the return to be laid before each House of the Parliament within 15 sitting days of that House after the return is received by him.

Delegation

22. (1) The Minister or the Comptroller-General may, either generally or as otherwise provided in the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister or the Comptroller-General, as the case may be.

(3) A delegation under this section does not prevent the exercise of a power by the Minister or the Comptroller-General, as the case may be.

Applications for review

23. (1) Applications may be made to the Administrative Appeals Tribunal for review of—

- (a) a decision of the Comptroller-General under section 9 or 12 approving, or refusing to approve, payment of bounty;
- (b) a decision of the Minister made for the purposes of sub-section 13 (2) or (7); or
- (c) a requirement by the Minister under section 15.

(2) In sub-section (1), “decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Statement to accompany notification of decisions

24. (1) Where the Minister, a delegate of the Minister, the Comptroller-General or a delegate of the Comptroller-General, makes a decision or makes a requirement of a kind referred to in section 23 and gives to

the person or persons whose interests are affected by the decision notification in writing of the making of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision or requirement to which the notice relates by or on behalf of the person or persons whose interests are affected by the decision.

(2) Any failure to comply with the requirements of sub-section (1) in relation to a decision or requirement does not affect the validity of the decision or requirement.

Appropriation

25. Bounty is payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

Transitional

26. (1) Where a processor processed bountiable fruit before the last day of the month next following the month in which this Act receives the Royal Assent, then, notwithstanding anything contained in sub-section 9 (1), that sub-section applies in relation to the first set of information and calculations that the processor is required under that sub-section to furnish as if a reference in that sub-section to a month were a reference to the period commencing on 1 July 1982 and ending on the last day of the month next following the month in which this Act receives the Royal Assent.

(2) Neither section 17 nor section 20 operates so as to render unlawful anything done, or omitted to be done, before the day on which this Act receives the Royal Assent.

Regulations

27. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may prescribe penalties not exceeding \$200 for offences against the regulations.