



Bounty and Subsidy Legislation Amendment Act 1987

No. 54 of 1987

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Bounty and Subsidy Legislation Amendment Act 1987

No. 54 of 1987

**An Act to amend certain Acts providing for the payment of
bounty or subsidy, and for related purposes**

[Assented to 5 June 1987]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Bounty and Subsidy Legislation
Amendment Act 1987*.

Commencement

2. (1) Subject to this section, this Act shall come into operation on the
day on which it receives the Royal Assent.

(2) Part II shall be deemed to have come into operation on 5 September
1986.

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(3) Paragraph 10 (a) and section 12 shall be deemed to have come into operation on 1 January 1987.

(4) Part V shall be deemed to have come into operation on 20 August 1986.

(5) Part VI shall be deemed to have come into operation on 15 April 1986.

(6) The amendments of the *Bounty (Bed Sheetting) Act 1977*, the *Bounty (Commercial Motor Vehicles) Act 1978* and the *Bounty (Injection-moulding Equipment) Act 1979* made by section 22 shall come into operation on 1 July 1987.

(7) The amendments of the *Bounty (Computers) Act 1984* made by section 22 (other than the amendments of subsection 3 (1) of that Act) and the amendments of the *Bounty (Textile Yarns) Act 1981* made by that section shall come into operation 30 days after the day on which this Act receives the Royal Assent.

(8) The amendment of the *Bounty (Ship Repair) Act 1986* made by section 22 shall be deemed to have come into operation on 10 October 1986.

Application

3. (1) The amendments of subsections 15 (1), 16 (6) and (7) and 17 (1) of the *Bounty (Computers) Act 1984* made by section 22 do not apply in relation to offences committed before the commencement of those amendments.

(2) The amendments of the *Bounty (Textile Yarns) Act 1981* made by section 22 do not apply in relation to claims for bounty made before the commencement of those amendments and those claims shall be dealt with as if those amendments had not been made.

(3) The amendment of section 15 of the *Bounty (Textile Yarns) Act 1981* made by section 22 does not apply in relation to offences committed before the commencement of that amendment.

PART II—AMENDMENTS OF THE BOUNTY (BED SHEETING) ACT 1977

Principal Act

4. The *Bounty (Bed Sheetting) Act 1977*¹ is in this Part referred to as the Principal Act.

Interpretation

5. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition in its appropriate position determined on a letter-by-letter basis:

“‘manufacturer’ means a person who carries out all or any of the manufacturing processes in relation to bed sheeting;”.

6. After section 3 of the Principal Act the following section is inserted:

Related bodies corporate

“3A. (1) Where a body corporate:

- (a) is the holding company of another body corporate;
 - (b) is a subsidiary of another body corporate; or
 - (c) is a subsidiary of the holding company of another body corporate;
- that first-mentioned body corporate and that other body corporate shall, for the purposes of this Act, be deemed to be related to each other.

“(2) For the purposes of this section, a body corporate shall, subject to subsection (4), be deemed to be a subsidiary of another body corporate if:

- (a) that other body corporate:
 - (i) controls the composition of the board of directors of the first-mentioned body corporate;
 - (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first-mentioned body corporate; or
 - (iii) holds more than one-half of the issued share capital of the first-mentioned body corporate (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first-mentioned body corporate is a subsidiary of any body corporate that is that other body corporate’s subsidiary (including a body corporate that is that other body corporate’s subsidiary by another application or other applications of this paragraph).

“(3) Without limiting by implication the circumstances in which the composition of a body corporate’s board of directors is to be taken to be controlled by another body corporate, the composition of a body corporate’s board of directors shall be taken to be controlled by another body corporate if that other body corporate, by the exercise of some power exercisable by it with or without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other body corporate shall be deemed to have power to make such an appointment if:

- (a) a person cannot be appointed as a director without the exercise in the person’s favour by that other body corporate of such a power; or
- (b) a person’s appointment as a director follows necessarily from the person being an officer of that other body corporate.

“(4) In determining whether a body corporate is a subsidiary of another body corporate:

- (a) any shares held or power exercisable by that other body corporate in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable:
 - (i) by a nominee for that other body corporate (except where that other body corporate is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other body corporate, not being a subsidiary that is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other body corporate;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned body corporate, or of a trust deed for securing any issue of such debentures, shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, that other body corporate or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other body corporate if the ordinary business of that other body corporate or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with an associate of the other body corporate or its subsidiary.

“(5) A reference in this section to the holding company of a body corporate shall be read as a reference to a body corporate of which that other body corporate is a subsidiary.

“(6) In this section, ‘debenture’ includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a body corporate in respect of money that is or may be deposited with or lent to the body corporate, whether constituting a charge on property of the body corporate or not.”.

Specification of bounty

7. Section 5 of the Principal Act is amended:

- (a) by inserting in subsection (2) “who carried out the last process in the manufacture” after “manufacturer”; and
- (b) by omitting paragraph (3) (a) and substituting the following paragraph:

- “(a) the manufacture of the bed sheeting has been carried out wholly by:
- (i) where the manufacturer is a body corporate—the manufacturer, or the manufacturer and bodies corporate related to the manufacturer; or
 - (ii) in any other case—the manufacturer;”.

Registration of premises

8. Section 11 of the Principal Act is amended:

- (a) by omitting subsection (2) and substituting the following subsection:

“(2) Where:

- (a) a person carries on, or proposes to carry on, all the processes in the manufacture of bountiable bed sheeting at any premises; or
- (b) a person, being a body corporate, carries on, or proposes to carry on, a process or processes in the manufacture of bountiable bed sheeting at any premises, and all of the other processes in the manufacture of the bountiable bed sheeting are being carried on, or are proposed to be carried on, by bodies corporate related to the person;

the person may apply to the Comptroller-General for the registration of those premises for the purposes of this Act.”;

- (b) by omitting subsection (6) and substituting the following subsection:

“(6) Subject to subsections (3), (4) and (5), if, in the opinion of the Comptroller-General:

- (a) the applicant carries on, or proposes to carry on, all the processes in the manufacture of bountiable bed sheeting at the premises in respect of which the application is made; or
- (b) the applicant, being a body corporate, carries on, or proposes to carry on, a process or processes in the manufacture of bountiable bed sheeting at the premises in respect of which the application is made, and all of the other processes in the manufacture of the bountiable bed sheeting are being carried on, or are proposed to be carried on, by bodies corporate related to the person;

the Comptroller-General shall register those premises for the purposes of this Act.”; and

- (c) by omitting paragraphs (8) (a) and (b) and substituting the following paragraphs:

“(a) that no process in the manufacture of bountiable bed sheeting is being carried out at the premises;

- (aa) if the person who applied for the registration of the premises is not a body corporate—that there is no bountiable bed sheeting all the processes in whose manufacture are being carried out at the premises by the person;

- (b) if the person who applied for the registration of the premises is a body corporate—that there is no bountiable bed sheeting:
 - (i) all the processes in whose manufacture are being carried out at the premises by the person; or
 - (ii) a process or processes in whose manufacture is or are being carried out at the premises by the person, and all of the other processes in whose manufacture are being carried out at the premises or at other registered premises by bodies corporate related to the person; or”.

PART III—AMENDMENTS OF THE BOUNTY (BOOKS) ACT 1986

Principal Act

9. The *Bounty (Books) Act 1986*² is in this Part referred to as the Principal Act.

Interpretation

10. Section 4 of the Principal Act is amended:

- (a) by omitting paragraphs (5) (a) and (b) and substituting the following paragraphs:

“(a) the amount of any rebate or discount allowable in relation to the price, not being:

- (i) a rebate or discount in relation to bounty; or
- (ii) a rebate or discount for cash payment or prompt payment; and

- (b) except in the case of a price referred to in the definition of ‘publisher’s paper cost’ in subsection (1), an amount equal to 16.7% of:

- (i) where there is no amount referred to in paragraph (a)—the gross price; or
- (ii) where there is such an amount—the difference between the gross price and that amount.”; and

- (b) by adding at the end the following subsections:

“(9) The provisions of sections 48 (other than paragraphs (1) (a) and (b) and subsection (2)), 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to declarations for the purposes of paragraph (c) of the definition of ‘recognised educational institution’ in subsection (1) as if in those provisions references to regulations included references to declarations, references to a regulation included references to a declaration and references to repeal included a reference to revocation.

“(10) The provisions of sections 48 (other than paragraphs (1) (a) and (b) and subsection (2)), 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to approvals for the purposes of

paragraph (2) (f) as if in those provisions references to regulations included references to approvals, references to a regulation included references to an approval and references to repeal included a reference to revocation.”.

Ineligible books

11. Section 5 of the Principal Act is amended by inserting after paragraph (1) (s) the following paragraph:

“(sa) a book whose printing or publishing by a person, or whose sending by a person through the post, constitutes or would constitute an offence by a person against a law of the Commonwealth or of a Territory;”.

Specification of bounty

12. Section 10 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

“(5) For the purposes of this section, a book shall not be taken not to have been produced in Australia because only of the carrying out outside Australia of one or more of the production processes of typesetting, film preparation or colour separation in the book’s manufacture.”.

PART IV—AMENDMENTS OF THE BOUNTY (TEXTILE YARNS) ACT 1981

Principal Act

13. The *Bounty (Textile Yarns) Act 1981*³ is in this Part referred to as the Principal Act.

Interpretation

14. Section 2 of the Principal Act is amended by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions determined on a letter-by-letter basis:

“‘disqualifying accounting period’, in relation to a producer of bountiable yarn, means an accounting period of the producer in which a greater quantity of the bountiable yarn a process or processes in whose production were carried out by the producer was sold, or otherwise disposed of, for export from Australia than was used, or sold or otherwise disposed of for use, in the production of prescribed textiles at a registered textile factory;

‘qualifying accounting period’, in relation to a producer of bountiable yarn, means an accounting period of the producer other than such a period that immediately follows a disqualifying accounting period of the producer;”.

15. After section 3 of the Principal Act the following section is inserted:

Increased factory cost

“3AA. Where the last condition for the payment of bounty in respect of bountiable yarn (in this section called the ‘eligible yarn’) of a kind referred to in a paragraph of the definition of ‘bountiable yarn’ in subsection 2 (1) is satisfied on or after 1 July 1987 and in a qualifying accounting period of a producer of the eligible yarn, the factory cost in connection with the process or processes carried out by that producer in the production of the eligible yarn is increased by an amount ascertained in accordance with the formula:

$$\frac{\text{FCY} \times 3}{\text{FCD}} \times \frac{\text{FCE}}{10}$$

where:

FCY is the factory cost in connection with the process or processes carried out by that producer in that qualifying accounting period in the production of the eligible yarn (being that cost before its increase under this section);

FCD is the factory cost in connection with the process or processes carried out by that producer in that qualifying accounting period in the production of the eligible yarn and other bountiable yarn of the same kind as the eligible yarn used, or sold or otherwise disposed of for use, in the production of prescribed textiles in a registered textile factory; and

FCE is the factory cost in connection with the process or processes carried out by that producer in that qualifying accounting period in the production of bountiable yarn of the same kind as the eligible yarn sold, or otherwise disposed of, for export from Australia.”.

**PART V—AMENDMENTS OF THE FERTILISERS SUBSIDY ACT
1986**

Principal Act

16. The *Fertilisers Subsidy Act 1986*⁴ is in this Part referred to as the Principal Act.

Specification of subsidy

17. Section 9 of the Principal Act is amended by adding at the end the following subsection:

“(4) For the purposes of this Act:

- (a) subsidised nitrogenous substances produced before 20 August 1986 at premises registered under section 16 of the *Nitrogenous Fertilizers Subsidy Act 1966* shall be deemed to have been produced at registered premises; and
- (b) subsidised phosphatic substances produced before that day at premises registered under section 13 of the *Phosphate Fertilizers*

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Subsidy Act 1963 shall be deemed to have been produced at registered premises.”.

Application

18. Section 43 of the Principal Act is amended by omitting “produced, or exported to Australia,” and substituting “exported to Australia”.

Application

19. Section 47 of the Principal Act is amended by omitting “produced, or exported to Australia,” and substituting “exported to Australia”.

PART VI—AMENDMENTS OF THE SUBSIDY (CULTIVATION MACHINES AND EQUIPMENT) ACT 1986

Principal Act

20. The *Subsidy (Cultivation Machines and Equipment) Act 1986*^s is in this Part referred to as the Principal Act.

Specification of subsidy—manufactured subsidised equipment

21. Section 9 of the Principal Act is amended by omitting subsection (8) and substituting the following subsection:

“(8) Where:

- (a) the last substantial process in the manufacture of subsidised equipment was completed by a manufacturer before 15 April 1986; and
- (b) the equipment had not, before that day, been:
 - (i) sold, or otherwise disposed of, to a person for use by that person in commercial agriculture; or
 - (ii) used in commercial agriculture;

then:

- (c) the equipment shall, for the purposes of this Act (other than section 12), be deemed to have been manufactured on that day at registered premises;
- (d) where there is no manufacturer of the equipment to whom paragraph (b) of the definition of ‘manufacturer’ in subsection 4 (1) applies—the manufacturer referred to in paragraph (a) of this subsection shall be deemed to be the only manufacturer of the equipment;
- (e) where there is a manufacturer of the equipment to whom paragraph (b) of that definition applies—the manufacturer to whom that paragraph applies shall be deemed to be the only manufacturer of the equipment; and
- (f) where a sale of the equipment occurred before that day—the sale shall, for the purposes of this Act, be deemed to have occurred on that day.”.

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PART VII—OTHER AMENDMENTS OF ACTS

Other amendments of Acts

22. The Acts specified in the Schedule are amended as set out in that Schedule.

SCHEDULE

Section 22

OTHER AMENDMENTS OF ACTS

Bounty (Bed Sheeting) Act 1977

Subsections 8 (2) and (3):

Omit the subsections.

After section 10:

Add the following section:

Availability of bounty

“10AA. (1) Subject to subsection (2), but notwithstanding any other provision of this Act, if the Comptroller-General is of the opinion that the amount available in a period to which this Act applies will be insufficient to meet all valid claims for:

- (a) bounty payable in that period; and
- (b) bounty to be paid in that period by virtue of any previous operation of this subsection;

the Comptroller-General may, subject to the regulations:

- (c) defer the making of such payments of bounty as the Comptroller-General considers appropriate; and
- (d) make payments of bounty in such order as the Comptroller-General considers appropriate.

“(2) Notwithstanding any other provision of this Act, if money is not appropriated by the Parliament for the purpose of the payment of bounty in a financial year, a person is not entitled to be paid bounty in that year.”.

Section 22:

Repeal the section, substitute the following section:

Appropriation

“22. Bounty is payable out of money appropriated by the Parliament for the purpose.”.

Bounty (Books) Act 1986

Paragraph 4 (2) (f):

Insert “in writing” after “approved”.

Paragraph 14 (4) (d):

Omit “day on which the last condition for the payment of bounty in respect of those books became satisfied”, substitute “completion of the production of all those books”.

Bounty (Commercial Motor Vehicles) Act 1978

Section 14E:

Repeal the section.

SCHEDULE—continued

After section 22A:

Add the following section:

Availability of bounty

“22B. (1) Subject to subsection (2), but notwithstanding any other provision of this Act, if the Comptroller-General is of the opinion that the amount available in a financial year for payment of bounty will be insufficient to meet all valid claims for:

- (a) bounty payable in that year; and
- (b) bounty to be paid in that year by virtue of any previous operation of this subsection;

the Comptroller-General may, subject to the regulations:

- (c) defer the making of such payments of bounty as the Comptroller-General considers appropriate; and
- (d) make payments of bounty in such order as the Comptroller-General considers appropriate.

“(2) Notwithstanding any other provision of this Act, if money is not appropriated by the Parliament for the purpose of the payment of bounty in a financial year, a person is not entitled to be paid bounty in that year.”

Section 23:

Repeal the section, substitute the following section:

Appropriation

“23. Bounty and advances on account of bounty under sections 11 and 14G are payable out of money appropriated by the Parliament for the purpose.”

Bounty (Computers) Act 1984

Subsection 3 (1) (definition of “bountiable modem”):

Omit paragraph (b), substitute the following paragraph:

“(b) has operational transmission speeds of 300 binary digits per second or greater; and”.

Subsection 3 (1) (definition of “bountiable multiplexer”):

Omit paragraph (b), substitute the following paragraph:

“(b) has operational transmission speeds of not more than 2,500,000 binary digits per second; and”.

Section 13:

After subsection (1) insert the following subsection:

“(1A) A claim may not be made for an amount of bounty that is less than \$200 or, if another amount is prescribed, that other amount.”

Paragraph 13 (2) (c):

Omit “the form”, substitute “section 19A”.

Paragraph 14 (2) (c):

Omit “the form”, substitute “section 19A”.

Subsection 15 (1):

Omit “Penalty for contravention of this subsection: \$1,000.”, substitute:

“Penalty:

SCHEDULE—continued

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.”.

Paragraph 15 (2) (c):

Omit “the form”, substitute “section 19A”.

Paragraph 16 (2) (c):

Omit “the form”, substitute “section 19A”.

Subsection 16 (6):

Omit “Penalty for contravention of this subsection—\$1,000.”, substitute:
“Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.”.

Subsection 16 (7):

Omit “subsection: \$1,000 or imprisonment for 6 months, or both.”, substitute:
“subsection:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both;
or
- (b) in the case of a body corporate—\$5,000.”.

Subsection 17 (1):

Omit “Penalty for contravention of this subsection: \$1,000.”, substitute:
“Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.”.

Paragraph 17 (2) (c):

Omit “the form”, substitute “section 19A”.

Section 18:

Add the following subsections:

“(2) Where:

(a) the amount of an overpayment of a claim for bounty, being an overpayment referred to in subsection (1), is not higher than \$25,000; and

(b) the Comptroller-General is satisfied:

(i) that:

(A) 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 this Act or the regulations; and

(B) the repayment of the amount of the overpayment would be unreasonable or would cause undue hardship to that person; or

(ii) that:

(A) the cost of endeavouring to recover the overpayment is so high; and

(B) 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;

SCHEDULE—continued

the Comptroller-General may refrain from causing a demand for repayment of the amount of the overpayment to be served in accordance with that subsection.

“(3) Where, in accordance with subsection (2), the Comptroller-General refrains from causing a demand for repayment of the amount of an overpayment to be served in accordance with subsection (1), particulars of the amount shall be included in the report of the operations of the Australian Customs Service for the year in which the Comptroller-General so refrained.”.

After section 19:

Insert the following section in Part III:

Forms

“19A. (1) Where, under this Act, a claim, acknowledgment, return or statement lodged by a person in accordance with an approved form is required to be signed and witnessed as required by this section, the form shall:

- (a) where the person is a natural person, be signed personally in the presence of a witness by:
 - (i) the person; or
 - (ii) another natural person authorised by the first-mentioned person to sign forms under this Act on behalf of the first-mentioned person;
- (b) where the person is a body corporate, be:
 - (i) under the seal of the first-mentioned person; or
 - (ii) signed personally in the presence of a witness by a natural person authorised by the first-mentioned person to sign forms under this Act on behalf of the first-mentioned person; and
- (c) where the form is required to be signed by a natural person in the presence of a witness, state the name and address of the witness and contain a declaration signed by the witness stating that the form was signed in the presence of the witness.

“(2) For the purposes of this section, a person shall be taken to have authorised another person to sign forms under this Act on behalf of the first-mentioned person if, and only if, the first-mentioned person has so authorised the other person in writing delivered to the Comptroller-General, being writing:

- (a) where the first-mentioned person is a natural person, that:
 - (i) is signed personally in the presence of a witness by the first-mentioned person; and
 - (ii) states the name and address of the witness and contains a declaration signed by the witness stating that the writing was signed in the presence of the witness; or
- (b) where the first-mentioned person is a body corporate—under the seal of the first-mentioned person.”.

Bounty (High Alloy Steel Products) Act 1983

Paragraph 11 (3) (c):

Omit “10D”, substitute “11D”.

SCHEDULE—continued

Bounty (Injection-moulding Equipment) Act 1979

Subsections 14H (4) and (5):

Omit the subsections.

After section 14H:

Insert the following section:

Availability of bounty

“14HA. (1) Subject to subsections (2) and (3), but notwithstanding any other provision of this Act, if the Comptroller-General is of the opinion that the amount available in a period to which this Act applies (not being the period commencing on 10 October 1987) for payment of bounty will be insufficient to meet all valid claims for:

- (a) bounty payable in that period; and
- (b) bounty to be paid in that period by virtue of any previous operation of this subsection;

the Comptroller-General may, subject to the regulations:

- (c) defer the making of such payments of bounty as the Comptroller-General considers appropriate; and
- (d) make payments of bounty in such order as the Comptroller-General considers appropriate.

“(2) Subject to subsection (3), but notwithstanding any other provision of this Act, if the Comptroller-General is of the opinion that the amount (in this subsection referred to as the ‘relevant amount’) available in the period to which this Act applies (being the period commencing on 10 October 1987) for payment of bounty will be or is insufficient to meet all valid claims for bounty, amounts of bounty in respect of the claims shall, subject to the regulations, be approved for payment in such order as is determined by the Comptroller-General in writing and, when the aggregate of the amounts of bounty approved for payment equals the relevant amount, no further amounts of bounty are payable.

“(3) Notwithstanding any other provision of this Act, if money is not appropriated by the Parliament for the purpose of the payment of bounty in a financial year, a person is not entitled to be paid bounty in that year.”

After section 14X:

Insert the following section in Part III:

Appropriation

“14Y. Bounty, and advances on account of bounty, under this Part are payable out of money appropriated by the Parliament for the purpose.”

Section 23:

Repeal the section.

Bounty (Printed Fabrics) Act 1981

After paragraph 3 (2) (c):

Insert the following paragraph:

“(ca) shall disregard freight, and costs relating to vehicles, incurred in respect of the delivery of completed or partly completed bountiable printed fabric;”

SCHEDULE—continued

Bounty (Ship Repair) Act 1986

After subsection 7 (1):

Insert the following subsection:

“(1A) For the purposes of this Act, the price paid for the repair or repairs under a contract pursuant to which the repair was, or the repairs were, carried out, shall be taken to be the gross price payable for the repair or repairs under the contract less the amount of any rebate or discount allowable in respect of the price, not being a rebate or discount in respect of the bounty.”.

Paragraph 10 (3) (d):

Omit “repair contract or”.

Subsection 12 (2):

Omit “repair contracts or”.

Subsection 12 (3):

Omit “a repair contract or”.

Bounty (Textile Yarns) Act 1981

Subsections 2 (6) and (7):

Omit the subsections, substitute the following subsections:

“(6) A reference in this Act to costs incurred by a producer of bountiable yarn in an accounting period of the producer is a reference to an amount that has become payable by the producer in the period, whether or not it is paid in the period.

“(7) For the purposes of this Act, 2 persons shall be deemed to be associates of each other if, and only if:

- (a) both being natural persons:
 - (i) they are connected by a blood relationship or by marriage or by adoption; or
 - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
- (b) both being bodies corporate:
 - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate);
 - (ii) both of them together control, directly or indirectly, a third body corporate; or
 - (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them;
- (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);
- (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate);
- (e) they are members of the same partnership; or
- (f) they are trustees or beneficiaries, or one of them is a trustee and the other is a beneficiary, of the same trust.”.

Section 3:

Repeal the section, substitute the following section:

Additional value

“3. (1) For the purposes of this Act, the additional value added to bountiable yarn by a producer of the yarn shall be deemed to be the amount that is the factory cost

SCHEDULE—continued

incurred by the producer in connection with the process or processes carried out by that producer in the production of the yarn.

“(2) Subject to subsection (3), the factory cost incurred by a producer of bountiable yarn in connection with processes in the production of that yarn includes:

- (a) factory overhead charges, including:
 - (i) factory administration costs;
 - (ii) research and development expenditure;
 - (iii) the cost of reusable packaging;
 - (iv) the cost of machine maintenance and machine replacement parts;
 - (v) the cost of energy and water; and
 - (vi) the cost of solvents, detergents, machinery or spinning lubricants and similar materials used to facilitate the production of the yarn;
- apportioned on the basis of a full accounting period of the producer; and
- (b) other costs incurred by the producer in connection with those processes and the packaging of the yarn, including salaries, wages and other remuneration.

“(3) The factory cost incurred by a producer of bountiable yarn in connection with processes in the production of that yarn does not include:

- (a) the cost of general administration (including, where the producer is a body corporate, corporate expenses), selling costs, interest, service charges or taxation (other than pay-roll tax) or bonuses issued or paid to employees of the producer from the profits of the producer;
- (b) rent, hire or leasing costs in relation to land, buildings, plant or equipment, other than any part of those costs that:
 - (i) constitutes rates or other municipal charges;
 - (ii) constitutes the cost of the repair and maintenance of buildings, plant or equipment; or
 - (iii) would normally be treated as depreciation;
- (c) the cost of:
 - (i) the polymers, fibres or yarns from which the bountiable yarn was produced;
 - (ii) any dyes, bleaches, yarn lubricants or yarn additives that were used in carrying out a process in the production of the bountiable yarn; or
 - (iii) any disposable packaging for the yarn;
- (d) selling and service charges;
- (e) sales tax in respect of completed yarn;
- (f) tax on income, other than tax on income deducted in respect of the wages, salaries or other remuneration of employees;
- (g) costs incurred after the completion of the production of the yarn, other than costs relating to the testing or packaging of the yarn at registered premises;
- (h) the value of perquisites provided to employees of the producer that does not form part of their assessable income for the purposes of the *Income Tax Assessment Act 1936*;
- (j) profit;
- (k) bonuses paid out of, or in anticipation of, profits;
- (m) costs charged or levied on the producer by an associate of the producer that are not costs actually incurred by the associate;
- (n) such of the depreciation of buildings as exceeds a rate of 4% per annum, or, if another rate is prescribed, that other rate, on the historic cost of factory buildings owned by the producer;

SCHEDULE—continued

- (p) depreciation of machinery, plant or equipment, other than depreciation of machinery, plant or equipment owned by the producer that is an allowable deduction of the producer for the purposes of the *Income Tax Assessment Act 1936*;
- (q) losses incurred on the sale or other disposal of buildings, machinery, plant or equipment;
- (r) long service leave, other than provision for such leave;
- (s) severance pay, other than severance pay in relation to service during a period that is within the bounty period and during which the producer was a producer of the goods;
- (t) freight, and costs relating to vehicles, incurred in respect of the delivery of completed or partly completed yarn;
- (u) the cost of superannuation and similar schemes, other than cost that is an allowable deduction of the producer for the purposes of the *Income Tax Assessment Act 1936*;
- (v) workers compensation, other than insurance premiums for such compensation;
- (w) the cost of any material on which bounty has been paid or is to become payable to the producer under any law of the Commonwealth; or
- (y) such costs (if any) as are prescribed.

“(4) For the purposes of paragraph (3) (c), the cost of any materials, being polymers, fibres, yarns, dyes, bleaches, yarn lubricants, yarn additives or packaging, shall be taken to include the cost of any delivery of the materials.

“(5) Where, in relation to a claim for bounty or in relation to a return in accordance with section 10BA or otherwise for the purposes of this Act, the Comptroller-General:

- (a) is unable to verify the additional value added to bountiable yarn by a producer of the yarn; or
- (b) forms the opinion that, having regard to sound accounting principles, a cost included in the factory cost by reference to which the additional value added to the yarn by a producer is ascertained:
 - (i) is incorrect or over-estimated;
 - (ii) is higher than would have been the case if the producer had not marginally costed or similarly disproportionately costed the production of yarn in respect of which bounty is not payable;
 - (iii) has been fixed in order to obtain an increase in bounty;
 - (iv) is unduly higher than a similar cost incurred by other producers of similar yarn;
 - (v) has been increased as the result of the influence of a relationship between the producer and an associate of the producer; or
 - (vi) is higher than would have been the case if the producer had provided services that were provided, and charged for, by an associate of the producer;

the Comptroller-General may, by writing signed by him or her, determine the additional value added to that yarn by that producer, being the value that, having regard to all the relevant circumstances, the Comptroller-General considers to be appropriate, and the additional value added to that yarn by that producer shall be the value so determined.”.

Section 4:

Omit “, the Minister”.

SCHEDULE—continued

Section 9:

Repeal the section, substitute the following section:

Good quality of bountiable yarn

“9. (1) Bounty is not payable on the production of bountiable yarn if the Comptroller-General declares in writing that, in his or her opinion, the yarn is not of good and merchantable quality.

“(2) Where the Comptroller-General makes a declaration under subsection (1) in respect of goods in relation to which bounty has been paid to a person, the person is liable to repay to the Commonwealth an amount equal to the amount of that bounty.”.

After section 10B:

Insert the following sections:

Certain producers to give returns of costs

“10BA. (1) A producer of bountiable yarn shall, within 6 months after the end of each accounting period of the producer ending on or after the commencement of this section, that falls, or part of which falls, within the bounty period, lodge a return setting out particulars of the factory cost incurred by the producer in relation to bountiable yarn produced in that accounting period by the producer.

“(2) A return under subsection (1) in respect of bountiable yarn shall:

- (a) be in accordance with the appropriate approved form;
- (b) include such information as is, and such estimates as are, required by the form;
- (c) be signed and witnessed as required by section 10D; and
- (d) be lodged with a Collector for a State or with the Comptroller-General.

“(3) The Comptroller-General may, by notice signed by the Comptroller-General, require a producer of bountiable yarn who has lodged a return under subsection (1) to provide, within a period specified in the notice (not being a period of less than one month), a certificate, signed by a qualified accountant approved by the Comptroller-General for the purpose, to the effect that the particulars set out in the return are correct.

“(4) Without limiting the generality of subsection (3), the Comptroller-General, in considering whether a producer of bountiable yarn should be required to provide a certificate under that subsection, shall have regard to:

- (a) the extent of the claims for bounty made by the producer in the accounting period of the producer; and
- (b) the expense involved in obtaining the certificate.

“(5) The Comptroller-General shall not refuse to approve a qualified accountant for the purposes of subsection (3) in relation to a producer of bountiable yarn unless the Comptroller-General is satisfied that it is not appropriate to approve the accountant because of an association between the accountant and the producer.

“(6) A producer of bountiable yarn shall not refuse or fail to comply with subsection (1) or (2) to the extent that the producer is capable of complying with it.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

“(7) A producer of bountiable yarn shall not, in purported compliance with subsection (1) or (2), give information that is, or estimates that are, to the knowledge of the producer, false or misleading in a material particular.

SCHEDULE—continued

Penalty for contravention of this subsection:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both;
or
- (b) in the case of a body corporate—\$5,000.

“(8) Where a producer of bountiable yarn who is required to lodge a return under subsection (1) does not do so, the producer is not entitled to bounty, or to an advance on account of bounty, unless and until the return is lodged.

Adjustment of claims following returns

“10BB. (1) Where the particulars of factory cost set out in a return under section 10BA in relation to an accounting period of a producer of bountiable yarn show a difference between that cost and the factory cost, or an estimate of factory cost, on which claims for bounty in respect of bountiable yarn lodged in respect of that period by the producer were based, the producer shall lodge with the return a statement in respect of the difference.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

“(2) Where a producer of bountiable yarn who is required to lodge a statement under subsection (1) does not do so, the producer is not entitled to bounty, or to an advance on account of bounty, unless and until the statement is lodged.

“(3) A statement under subsection (1) shall:

- (a) be in accordance with the appropriate approved form;
- (b) include such information as is required by the form; and
- (c) be signed and witnessed as required by section 10D.

“(4) Where a statement under subsection (1) is lodged by a producer of bountiable yarn in relation to an accounting period of the producer, the Comptroller-General shall, after examining the statement and causing such inquiries as the Comptroller-General considers necessary to be made (including inquiries involving the exercise of powers under sections 15 and 16):

- (a) if the Comptroller-General is satisfied that the statement complies with subsection (3) and that the producer is entitled to be paid an additional amount of bounty in respect of the bountiable yarn in relation to which claims for bounty were lodged in respect of that period—approve, in writing, payment of the additional amount;
- (b) if the Comptroller-General is satisfied that there has been an overpayment of bounty by more than \$100 in respect of the bountiable yarn in relation to which claims for bounty were lodged in respect of that period—cause to be served on the producer a demand for the repayment of the amount of the overpayment;
or
- (c) if paragraph (a) or (b) does not apply—decline, in writing, to adjust payments of bounty made in respect of claims lodged by the producer in respect of that period.

“(5) Where, under paragraph (4) (b), a demand for the repayment of an amount is served on a producer of bountiable yarn, the producer is liable to repay that amount to the Commonwealth.

“(6) Where the Comptroller-General makes a decision under subsection (4) in relation to a statement under subsection (1), the Comptroller-General shall cause to be served on the producer of bountiable yarn who lodged the statement a notice in writing setting out the decision.”

SCHEDULE—continued

Subsection 10C (1):

Insert “or a statement under section 10BB” after “section 10B”.

Section 12:

Repeal the section, substitute the following section:

Accounts

“12. (1) A person is not entitled to bounty unless:

- (a) the person keeps, in writing in the English language, such accounts, books, documents and other records as correctly record and explain:
 - (i) such particulars relating to the production (including the cost of production) of bountiable yarn in respect of which bounty is, or may become, payable as are specified by the Comptroller-General in a notice published in the *Gazette*; and
 - (ii) such other particulars (if any) in relation to that yarn as are specified by the Comptroller-General by notice in writing served on the person; and
- (b) the person retains those accounts, books, documents and other records for at least 3 years after the day on which a claim under subsection 10 (1) for bounty was made in respect of the yarn concerned.

“(2) For the purposes of this section, accounts, books, documents or other records shall be taken to be kept in writing in the English language if they are kept in a form in which they are readily accessible and readily convertible into writing in the English language.”.

Section 15:

Omit “Penalty: \$500”, substitute:

“Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.”.

Subsection 16 (1):

- (a) Insert “on reasonable grounds” after “believes”.
- (b) Omit “the time”, substitute “a reasonable time”.

After subsection 16 (1):

Insert the following subsections:

“(1A) A notice under subsection (1) requiring a person to produce an account, book, document or record shall set out the effect of subsection (1B).

“(1B) A person who, under a notice under subsection (1), produces an account, book, document or record kept, made or prepared by another person that, to the knowledge of the first-mentioned person, is false or misleading in a material particular shall, upon so producing the account, book, document or record, give to the person to whom the first-mentioned person is required to produce the account, book, document or record, a statement in writing signed by the first-mentioned person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the account, book, document or record is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in respect of which the account, book, document or record is, to the knowledge of the first-mentioned person, false or misleading.

SCHEDULE—continued

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both;
or
- (b) in the case of a body corporate—\$5,000.”

Section 18:

Repeal the section, substitute the following sections:

Offences

“18. (1) A person shall not, without reasonable excuse, refuse or fail:

- (a) to attend before a Collector or an authorised 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 under this Act.

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both;
or
- (b) in the case of a body corporate—\$5,000.

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

Penalty:

- (a) in the case of a natural person—\$10,000 or imprisonment for 5 years, or both;
or
- (b) in the case of a body corporate—\$50,000.

“(3) A person shall not:

- (a) knowingly or recklessly make to an authorised officer or other person exercising a power or performing a function or duty in relation to this Act a statement, either orally or in writing, that is to the knowledge of the person false or misleading in a material particular; or
- (b) knowingly or recklessly present (otherwise than under subsection 16 (1)) to an authorised officer or other person exercising a power or performing a function or duty in relation to this Act an account, book, document or other record that is to the knowledge of the person false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both;
or
- (b) in the case of a body corporate—\$5,000.

“(4) Where, in proceedings for an offence against subsection (2) or (3) in respect of any conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that a director, servant or agent of the corporation, being a director, servant or agent by whom the conduct was engaged is within the scope of his or her actual or apparent authority, had that state of mind.

“(5) Any conduct engaged in on behalf of a corporation:

- (a) by a director, servant or agent of the corporation within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the

SCHEDULE—continued

giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;
shall be deemed, for the purposes of subsections (2) and (3), to have been engaged in by the corporation.

“(6) A reference in subsection (4) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for the intention, opinion, belief or purpose.

“(7) A person shall not be convicted of:

- (a) both an offence against or arising out of subsection (2) and an offence against or arising out of subsection 10B (1); or
- (b) both an offence against or arising out of subsection (2) and an offence against or arising out of subsection (3);

in respect of the same claim for bounty.

“(8) A reference in subsection (7) to a person being convicted of an offence includes a reference to an order being made under section 19B of the *Crimes Act 1914* in relation to a person in respect of an offence.

“(9) An offence against subsection (2) is an indictable offence.

“(10) Notwithstanding that an offence against subsection (2) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

“(11) Where, in accordance with subsection (10), a court of summary jurisdiction convicts a person of an offence against subsection (2), the penalty that the court may impose is:

- (a) if the person is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
- (b) if the person is a body corporate—a fine not exceeding \$10,000.

Time for prosecutions

“18A. A prosecution for an offence against this Act may be commenced at any time within 3 years after the commission of the offence.

Recovery of bounty on conviction

“18B. (1) Where a person is convicted of an offence against subsection 10B (1) or 18 (2) or (3), the court may, in addition to imposing a penalty under the subsection, order the person to pay to the Commonwealth an amount not exceeding the amount of any bounty or advance on account of bounty wrongfully obtained by the person.

“(2) Where:

- (a) a court makes an order under subsection (1) ordering a person to refund to the Commonwealth the amount of any bounty or advance on account of bounty; and
- (b) the court has civil jurisdiction to the extent of the amount;

the order is enforceable in all respects, as a final judgment of the court in favour of the Commonwealth.

“(3) Where:

- (a) a court makes an order under subsection (1) ordering a person to refund to the Commonwealth the amount of any bounty or advance on account of bounty; and

SCHEDULE—continued

(b) the court:

- (i) does not have civil jurisdiction; or
- (ii) has civil jurisdiction, but does not have civil jurisdiction to the extent of the amount;

the proper officer of the court shall issue to the Comptroller-General a certificate in the prescribed form containing the prescribed particulars.

“(4) The certificate may, in the prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil jurisdiction to the extent of the amount ordered to be refunded to the Commonwealth.

“(5) Upon registration under subsection (4), the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

“(6) The costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions (if any), be deemed to be payable under the certificate.”.

Section 20:

Repeal the section.

After paragraph 21 (dd):

Insert the following paragraphs:

- “(dda) a decision of the Comptroller-General under paragraph 10BB (4) (a) approving a payment;
- (ddb) a decision of the Comptroller-General for the purposes of paragraph 10BB (4) (b);
- (ddc) a decision of the Comptroller-General under paragraph 10BB (4) (c) declining to adjust a payment;”.

Subsidy (Cultivation Machines and Equipment) Act 1986

Subsection 17 (2):

Omit “bounty”, substitute “subsidy”.

Sub-subparagraph 17 (4) (a) (ii) (C):

Omit “bounty”, substitute “subsidy”.

NOTES

1. No. 29, 1977, as amended. For previous amendments, see No. 79, 1979; No. 26, 1982; No. 39, 1985; and Nos. 10 and 119, 1986.
2. No. 127, 1986.
3. No. 103, 1981, as amended. For previous amendments, see Nos. 26 and 80, 1982; No. 39, 1985; and Nos. 10 and 119, 1986.
4. No. 131, 1986.
5. No. 133, 1986.

Bounty and Subsidy Legislation Amendment No. 54, 1987

***[Minister's second reading speech made in—
House of Representatives on 6 May 1987
Senate on 29 May 1987]***