



Bounty (Ships) Amendment Act 1985

No. 76 of 1985

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Bounty (Ships) Amendment Act 1985

No. 76 of 1985

An Act to amend the *Bounty (Ships) Act 1980*, and for related purposes

[Assented to 6 June 1985]

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

Short title, &c.

1. (1) This Act may be cited as the *Bounty (Ships) Amendment Act 1985*.

(2) The *Bounty (Ships) Act 1980*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Heading to Part I

3. Before section 1 of the Principal Act the following heading is inserted:

“PART I—PRELIMINARY”.

Interpretation

4. Section 3 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “Australian waters” and substituting the following definitions:

“‘accounting period’, in relation to a shipbuilder, has the meaning given by section 4B;

‘approved form’ means a form approved by the Comptroller-General in writing;”;

- (b) by omitting from sub-section (1) the definition of “Collector” and substituting the following definition:

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

- (c) by inserting after the definition of “modification” in sub-section (1) the following definition:

“‘non-prescribed shipbuilder’ means a person in whose name premises are registered under section 10;”;

- (d) by omitting from sub-section (1) the definitions of “registered yards” and “shipbuilder” and substituting the following definitions:

“‘prescribed shipbuilder’ means a person registered by the Minister under section 10A;

‘registered premises’ means premises registered by the Minister under section 10;

‘shipbuilder’ means a person who—

(a) carries out the construction or modification of bountiable vessels; or

(b) arranges for the whole of the construction or modification of bountiable vessels to be carried out on behalf of the person by other persons;”;

- (e) by omitting from paragraph (2) (a) “registered yards” and substituting “premises in Australia”;

- (f) by omitting from paragraph (2) (c) “tween-deck spaces” and substituting “between-deck spaces”;

- (g) by omitting paragraph (2) (d) and substituting the following paragraph:

“(d) where a part of the construction or modification of a bountiable vessel is carried out by a person on behalf of a non-prescribed shipbuilder at premises in Australia—that part of the construction or modification shall be deemed to have been carried out by the shipbuilder and, if the premises are not registered under section 10 in the name of the shipbuilder and other premises are registered under section 10 in the name of the shipbuilder in respect of all bountiable vessels, the vessel, vessels including the vessel or a class of vessels in which the vessel is included, to have been carried out at those other premises; and”;

(h) by adding at the end the following sub-section:

“(3) For the purposes of this Act, 2 persons are 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 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.”.

5. Section 4 of the Principal Act is repealed and the following sections are substituted:

Costs of construction or modification

“4. (1) For the purposes of this Act, the cost of the construction or modification of a bountiable vessel includes—

- (a) factory overhead charges (including rent, hire or leasing costs in relation to buildings, plant or equipment) apportioned on the basis of a full accounting period of the shipbuilder; and
- (b) expenditure on research and development.

“(2) For the purposes of this Act, where, in an accounting period of a shipbuilder, the shipbuilder receives from the Commonwealth, a State or Territory or an authority of the Commonwealth or of a State or Territory a grant in respect of the construction or modification of, research relating to, or the development of, bountiable vessels of a particular kind, then—

- (a) in a case where the shipbuilder is a non-prescribed shipbuilder—the cost of the construction or modification of bountiable vessels of that kind constructed or modified, in whole or in part, during the accounting period by the shipbuilder, being vessels in respect of the

construction or modification of which bounty is payable, shall be reduced by the amount of the grant; or

- (b) in a case where the shipbuilder is a prescribed shipbuilder—the cost of the construction or modification of bountiable vessels of that kind constructed or modified, in whole or in part, during the accounting period on behalf of the prescribed shipbuilder, being vessels in respect of the construction or modification of which bounty is payable, shall be reduced by the amount of the grant.

“(3) For the purposes of this Act, the cost of the construction or modification of a bountiable vessel does not include—

- (a) costs of general administration (other than factory and works administration), including, where the shipbuilder is a body corporate, corporate expenses;
- (b) selling or service charges;
- (c) sales tax in respect of the completed vessel;
- (d) tax on income, other than tax on income deducted in respect of the wages, salaries or other remuneration of employees;
- (e) costs incurred after the completion of the construction or modification of the vessel, other than costs incurred—
 - (i) in undertaking sea trials required—
 - (A) to determine the sea-worthiness of the vessel;
 - (B) under a law of the Commonwealth, of a State or Territory or of a foreign country; or
 - (C) by a written contract with the owner of the vessel;
 - (ii) in rectifying defects notified to the shipbuilder before delivery of the vessel to the owner; and
 - (iii) in meeting insurance premiums to cover warranty claims made, within 12 months after the completion of the construction or modification of the vessel, in relation to work carried out by the shipbuilder on the vessel before the completion of the construction or modification of the vessel;
- (f) without limiting the generality of paragraph (e), costs incurred in commissioning the completed vessel for the intended user of the vessel, whether or not the intended user is the shipbuilder;
- (g) the value of perquisites provided to employees of the shipbuilder (including, where the shipbuilder is a body corporate, staff of the body corporate) that does not form part of their taxable income;
- (h) profits;
- (j) bonuses paid out of profits;
- (k) costs charged to, or imposed on, the shipbuilder by an associate of the shipbuilder, other than costs actually incurred by the associate;
- (m) interest, other than interest on money that has been borrowed from another person for the purpose of financing—
 - (i) bought-in material and stock;

- (ii) work in progress;
- (iii) research and development; or
- (iv) the purchase of machinery, plant, equipment or buildings, being machinery, plant, equipment or buildings owned by the shipbuilder;
- (n) depreciation of buildings, other than depreciation at a rate of 4% per annum, or, if another rate is prescribed for the purposes of this paragraph, the other rate, on the historic cost of buildings owned by the shipbuilder;
- (p) depreciation of machinery, plant or equipment, other than depreciation of machinery, plant or equipment owned by the shipbuilder that is depreciation allowed by the Commissioner of Taxation for the purposes of a law of the Commonwealth relating to taxation;
- (q) losses incurred on the sale or other disposal of machinery, plant, equipment or buildings;
- (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 period to which this Act applies and during which the shipbuilder was a shipbuilder;
- (t) costs incurred in the delivery of the completed vessel;
- (u) costs incurred in the supervision of the construction or modification of the vessel by persons other than the shipbuilder or designer, other than where the supervision is required under a law of the Commonwealth, of a State or Territory or of a foreign country;
- (v) costs incurred in relation to fuel or lubricating oil, other than in relation to fuel or lubricating oil required for sea trials of a kind referred to in paragraph (e) (i);
- (w) costs charged to, or imposed on, the shipbuilder by the owner of the vessel in relation to the ordering by the owner of machinery, plant or equipment for the vessel;
- (x) costs incurred in the provision of machinery, plant or equipment (including fishing equipment) for the vessel, other than machinery, plant or equipment (not being reconditioned or used machinery, plant or equipment)—
 - (i) required for the navigation of the vessel;
 - (ii) with which the vessel is required to be fitted under a law of the Commonwealth, of a State or Territory or of a foreign country; or
 - (iii) included in a class of machinery, plant or equipment prescribed for the purposes of this paragraph;
- (y) costs incurred in the provision of stores or other goods for the vessel, other than stores or other goods—
 - (i) required under a law of the Commonwealth, of a State or Territory or of a foreign country to be carried on the vessel; or

- (ii) included in a class of stores or other goods prescribed for the purposes of this paragraph;
- (z) performance bonds;
- (za) liquidated damages; and
- (zb) such other costs as are prescribed.

Determination of costs of construction or modification

“4A. (1) Where the Comptroller-General—

- (a) is unable to verify the cost of the construction or modification of a bountiable vessel; or
- (b) having regard to sound accounting principles, forms the opinion that costs included in the cost of the construction or modification of a bountiable vessel—
 - (i) are incorrect or overestimated;
 - (ii) are higher than would have been the case if the shipbuilder had not marginally costed or similarly disproportionately costed the construction of a vessel in respect of which bounty is not payable;
 - (iii) have been fixed in order to obtain an increase in bounty;
 - (iv) are unduly higher than costs incurred by other shipbuilders in respect of similar vessels;
 - (v) have been increased as the result of the influence of a relationship between the shipbuilder and an associate of the shipbuilder; or
 - (vi) are higher than would have been the case if the shipbuilder had provided services that were provided, and charged for, by an associate of the shipbuilder,

the Comptroller-General may, in writing, determine the cost that is, for the purposes of this Act, to be taken to be the cost of the construction or modification of the vessel.

“(2) In making a determination under sub-section (1) in relation to a bountiable vessel, the Comptroller-General may disregard any costs charged to, or imposed on, the shipbuilder by an associate of the shipbuilder unless the costs were actually incurred by the associate.

Accounting periods

“4B. (1) Subject to sub-sections (2) and (3), each financial year is an accounting period of a shipbuilder.

“(2) A shipbuilder may, within 3 months after the *Bounty (Ships) Amendment Act 1985* receives the Royal Assent or becoming or again becoming a shipbuilder, whichever last occurs, notify the Comptroller-General, in writing, that the shipbuilder wishes each period of 12 months commencing on a specified day in a specified month to be an accounting period of the shipbuilder and, subject to sub-section (3), where the shipbuilder does so, each such period is an accounting period of the shipbuilder.

“(3) Where—

- (a) a shipbuilder has accounting periods of 12 months by virtue of sub-section (1) or (2) or a previous application of this sub-section; and
- (b) it becomes necessary or convenient that other periods (in this sub-section referred to as the ‘new periods’), being periods of 12 months in respect of which annual accounting reports of the shipbuilder are required to be prepared for the purposes of another law of the Commonwealth or of a law of a State or Territory, should, in future, be the accounting periods of the shipbuilder,

the shipbuilder may notify the Comptroller-General, in writing, that the shipbuilder wishes the new periods to be the accounting periods of the shipbuilder (being a notification describing the new periods by specifying the day and month of their commencement and setting out the reasons for the change of accounting periods) and, where the shipbuilder does so—

- (c) the accounting period of the shipbuilder in which commences the earliest of the new periods that commences after the notification shall cease to be an accounting period of the shipbuilder and the period commencing on the first day of that former accounting period and ending on the day immediately preceding that earliest of the new periods shall be an accounting period of the shipbuilder; and
- (d) after the end of the accounting period prescribed by paragraph (c), the new periods shall be the accounting periods of the shipbuilder.”

Heading to Part II

6. Before section 6 of the Principal Act the following heading is inserted:

“PART II—BOUNTY”.

Specification of bounty

7. Section 6 of the Principal Act is amended by omitting sub-sections (2) and (3) and substituting the following sub-sections:

“(2) Bounty in respect of the construction or modification of a bountiable vessel is payable to—

- (a) in a case where a non-prescribed shipbuilder carries out the whole of the construction or modification of the vessel—the non-prescribed shipbuilder;
- (b) in a case where a prescribed shipbuilder arranges for the whole of the construction or modification of the vessel to be carried out on behalf of the prescribed shipbuilder by other persons—the prescribed shipbuilder; or
- (c) in any other case—the persons (being non-prescribed shipbuilders) who carry out part of the construction or modification of the vessel, in such proportions as the Comptroller-General determines in writing.

“(3) A shipbuilder is not entitled to receive bounty in respect of the construction or modification of a bountiable vessel unless the construction or modification is commenced during the period to which this Act applies.

“(3A) A non-prescribed shipbuilder is not entitled to receive bounty in respect of the construction or modification of a vessel unless the construction or modification of the vessel is carried out, in whole or in part, by the shipbuilder and is so carried out —

- (a) at premises registered under section 10 in the name of the shipbuilder in respect of all bountiable vessels, the vessel, vessels including the vessel or a class of vessels in which the vessel is included; and
- (b) during a period during which the premises are so registered.

“(3B) A person who is a prescribed shipbuilder is not entitled to receive bounty in respect of the construction or modification of a vessel unless—

- (a) the person is registered under section 10A as a prescribed shipbuilder in respect of all bountiable vessels, the vessel, vessels including the vessel or a class of vessels in which the vessel is included;
- (b) the whole of the construction or modification of the vessel is carried out during a period during which the person is so registered; and
- (c) the person arranges for the whole of the construction or modification of the vessel to be carried out on behalf of the person by other persons at premises in Australia.

“(3C) Bounty is not payable in respect of a bountiable vessel constructed or modified by or for the Commonwealth or an authority of the Commonwealth (including an educational institution established by the Commonwealth).”.

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

Limit of available bounty in respect of vessels constructed or modified for export

“6A. (1) The amount available for payment of bounty in respect of the construction or modification of bountiable vessels, being vessels that are, at the time of the completion of the construction or modification of the vessels, intended by the owners of the vessels to be exported from Australia, is—

- (a) in relation to the period commencing on 10 December 1984 and ending on 30 June 1985—\$6,000,000;
- (b) in relation to the financial year commencing on 1 July 1985—\$10,000,000; and
- (c) in relation to the financial year commencing on 1 July 1986 and each subsequent financial year—such amount (if any) as is prescribed in respect of the financial year for the purposes of this paragraph.

“(2) If the Comptroller-General is of the opinion, in relation to a period referred to in sub-section (1), that the amount (in this sub-section referred to as the ‘relevant amount’) available for payment of bounty in respect of the construction or modification of bountiable vessels of the kind referred to in

sub-section (1) will be or is insufficient to meet all valid claims for bounty in respect of the vessels, 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 in respect of the vessels equals the relevant amount, no further amounts of bounty are payable in respect of the vessels.

“(3) Without limiting the generality of sub-section (2), regulations made for the purposes of that sub-section may make provision for and in relation to—

- (a) the reservation of amounts available, in relation to a period referred to in sub-section (1), for payment of bounty in respect of the construction or modification of bountiable vessels of the kind referred to in that sub-section;
- (b) amounts in respect of amounts of bounty so reserved to be approved for payment before any other amounts of bounty are approved for payment; and
- (c) deeming the construction or modification of vessels that are completed outside such a period to have been completed within such a period.”.

Heading to Part III

9. Before section 8 of the Principal Act the following heading is inserted:

“PART III—PAYMENT OF BOUNTY”.

Advances on account of bounty

10. Section 8 of the Principal Act is amended—

- (a) by adding at the end of sub-section (1) “in writing”;
- (b) by omitting from sub-section (2) all the words after “amount” (third occurring) and substituting “of the excess”; and
- (c) by omitting from sub-section (3) all the words after “received”.

11. Section 9 of the Principal Act is repealed and the following sections are substituted:

Claims for payment of bounty

“9. (1) A person who claims to be entitled to be paid an amount of bounty in respect of the construction or modification of a bountiable vessel may lodge a claim for payment of the amount.

“(2) The claim 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 the form; and
- (d) be lodged with—
 - (i) the Collector for the State or Territory in which the construction or modification of the vessel was completed; or

(ii) if there is no such Collector, the Comptroller-General, within 12 months after the completion of the construction or modification of the vessel.

“(3) As soon as practicable after the lodgment of the claim, but subject to sub-section 6A (2), the Comptroller-General shall, after examining the claim and causing such inquiries as the Comptroller-General considers necessary to be made (including inquiries under sections 14 and 15)—

- (a) in a case where the Comptroller-General is satisfied that the claim complies with sub-section (2) and that the claimant is, or, if certain estimates are correct, is, otherwise entitled to be paid an amount of bounty in respect of the vessel—approve, in writing, payment of the amount; or
- (b) in any other case—refuse, in writing, to approve payment of bounty in respect of the vessel.

“(4) Where the Comptroller-General makes a decision under sub-section (3) in relation to a claim, not being a decision made within 30 days after the lodging of the claim and approving payment of the amount of bounty claimed, the Comptroller-General shall cause to be served on the person who lodged the claim a notice in writing setting out the decision.

Variation of inadequate claims

“9A. (1) Where a person who has lodged a claim under section 9 in respect of a bountiable vessel (whether or not the claim has been dealt with under sub-section 9 (3)) considers that the claim was, by reason of an inadvertent error, a claim for an amount of bounty in respect of the vessel that was less than the amount of bounty that the person was entitled to claim in respect of the vessel, the person may lodge a claim for payment of the difference between the 2 amounts.

“(2) The claim 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 the form; and
- (d) be lodged with—
 - (i) the Collector for the State or Territory in which the construction or modification of the bountiable vessel was completed; or
 - (ii) if there is no such Collector, the Comptroller-General, within 12 months after the completion of the construction or modification of the vessel.

“(3) Where a claim under sub-section (1) relates to a claim under section 9 that has not been dealt with under sub-section 9 (3), the 2 claims shall be dealt with under sub-section 9 (3) as if they were the one claim under section 9.

“(4) As soon as practicable after the lodgment under sub-section (1) of a claim to which sub-section (3) does not apply, but subject to sub-section 6A (2), the Comptroller-General shall, after examining the claim and causing such inquiries as the Comptroller-General considers necessary to be made (including inquiries under sections 14 and 15)—

- (a) in a case where the Comptroller-General is satisfied that the claim complies with sub-section (2) and that the claimant is, or, if certain estimates are correct, is, otherwise entitled to be paid an additional amount of bounty in respect of the bountiable vessel to which the claim relates—approve, in writing, payment of the additional amount; or
- (b) in any other case—refuse, in writing, to approve payment of an additional amount of bounty in respect of the bountiable vessel to which the claim relates.

“(5) Where the Comptroller-General makes a decision under sub-section (4) in relation to a claim, not being a decision made within 30 days after the lodging of the claim and approving payment of the additional amount claimed, the Comptroller-General shall cause to be served on the person who lodged the claim a notice in writing setting out the decision.

Variation of excessive claims

“9B. (1) Where a person who has lodged a claim under section 9 in respect of a bountiable vessel (whether or not the claim has been dealt with under sub-section 9 (3)) becomes aware that the claim is, by reason of an inadvertent error, a claim for an amount of bounty that exceeds by more than \$100 the amount of bounty that the person was entitled to claim in respect of the vessel, the person shall, within 28 days after discovering the error, lodge an acknowledgment of the error, being an acknowledgment that complies with sub-section (2), with—

- (a) the Collector for the State or Territory in which the construction or modification of the vessel was completed; or
- (b) if there is no such Collector, the Comptroller-General.

Penalty: \$1,000.

“(2) An acknowledgment under sub-section (1) 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; and
- (c) be signed and witnessed as required by the form.

“(3) Where an acknowledgment under sub-section (1) relates to a claim under section 9 that has not been dealt with under sub-section 9 (3), the claim shall be dealt with under sub-section 9 (3) as if it had been amended in accordance with the acknowledgment.

“(4) Where the Comptroller-General, after examining an acknowledgment under sub-section (1) to which sub-section (3) does not apply and causing such inquiries as the Comptroller-General considers necessary to

be made (including inquiries under sections 14 and 15), is satisfied that there has been an overpayment of a claim by more than \$100, the Comptroller-General shall cause to be served on the person who lodged the claim a demand for the repayment of the amount of the overpayment, and the person is liable to repay that amount to the Commonwealth.

Shipbuilders to furnish returns of costs

“9C. (1) A shipbuilder shall, within 6 months after the end of each accounting period of the shipbuilder that falls, or part of which falls, within the period to which this Act applies, lodge a return setting out particulars of the cost incurred by the shipbuilder in the accounting period in relation to the construction or modification of bountiable vessels, being a return that complies with sub-section (2), with—

(a) the Collector for—

(i) the State or Territory in which the construction or modification of the bountiable vessels was completed; or

(ii) a State or Territory in which the construction or modification of one or some of the bountiable vessels was completed,

as the case requires; or

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

“(2) A return under sub-section (1) 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; and

(c) be signed and witnessed as required by the form.

“(3) The Comptroller-General may, by notice in writing served on the shipbuilder, require the shipbuilder to lodge with the Comptroller-General, within the 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 in writing for the purpose, to the effect that the particulars set out in the return are correct.

“(4) Without limiting the generality of sub-section (3), the Comptroller-General, in considering whether the shipbuilder should be required to furnish a certificate under that sub-section, shall have regard to—

(a) the extent of the claims for bounty made by the shipbuilder in the relevant accounting period of the shipbuilder;

(b) the expense involved in obtaining the certificate; and

(c) the relativity of those claims with that expense.

“(5) The Comptroller-General shall not refuse to approve a qualified accountant for the purposes of sub-section (3) unless the Comptroller-General is satisfied that it is not appropriate to approve the accountant because of an association between the accountant and the shipbuilder or an associate of the shipbuilder.

“(6) A shipbuilder shall not—

- (a) refuse or fail to comply with sub-section (1) to the extent that the shipbuilder is capable of complying with that sub-section; or
- (b) refuse or fail to comply with a notice under sub-section (3) to the extent that the shipbuilder is capable of complying with the notice.

Penalty: \$1,000.

“(7) A shipbuilder shall not—

- (a) lodge a return under sub-section (1) that is, to the knowledge of the shipbuilder, false or misleading in a material particular; or
- (b) lodge a certificate, being a certificate lodged pursuant to a notice under sub-section (3), that is, to the knowledge of the shipbuilder, false or misleading in a material particular.

Penalty for contravention of this sub-section: \$1,000 or imprisonment for 6 months, or both.

Adjustment of claims following returns

“9D. (1) Where the particulars of cost set out in a return under section 9C in relation to an accounting period of a shipbuilder show a difference between that cost and a cost, or an estimate of cost, on which claims for bounty lodged in respect of that period by the shipbuilder were based, not being a cost determined under section 4A, the shipbuilder shall lodge with the return a statement in respect of the difference, being a statement that complies with sub-section (2).

Penalty: \$1,000.

“(2) The statement 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 the form.

“(3) Where a statement under sub-section (1) is lodged by a shipbuilder in relation to an accounting period of the shipbuilder, the Comptroller-General shall, after examining the statement and causing such inquiries as the Comptroller-General considers necessary to be made (including inquiries under sections 14 and 15)—

- (a) in a case where the Comptroller-General is satisfied that the statement complies with sub-section (2) and that the shipbuilder is entitled to be paid an additional amount of bounty in respect of the construction or modification of bountiable vessels for which claims for bounty were lodged in respect of the accounting period—approve, in writing, payment of the additional amount;
- (b) in a case where the Comptroller-General is satisfied that there has been an overpayment of bounty by more than \$100 in respect of claims lodged by the shipbuilder in respect of the accounting period—cause to be served on the shipbuilder a demand for the repayment of the

amount of the overpayment, and the shipbuilder is liable to repay that amount to the Commonwealth; or

- (c) in any other case—refuse, in writing, to adjust payments of bounty made in respect of claims lodged by the shipbuilder in respect of the accounting period.

“(4) Where the Comptroller-General makes a decision under sub-section (3) in relation to a statement under sub-section (1), the Comptroller-General shall cause to be served on the shipbuilder who lodged the statement a notice in writing setting out the decision.

Other adjustments of claims

“9E. If the Comptroller-General becomes satisfied, otherwise than after examining—

- (a) an acknowledgment under sub-section 9B (1); or
- (b) a statement under sub-section 9D (1),

that there has been an overpayment of a claim for bounty by more than \$100, the Comptroller-General shall cause to be served on the shipbuilder who lodged the claim a demand for repayment of the amount of the overpayment, and the shipbuilder is liable to repay the amount to the Commonwealth.

Recovery of repayments

“9F. (1) Where a shipbuilder is liable to repay an amount to the Commonwealth under section 8, 9B, 9D or 9E, the Commonwealth may, by action in a court of competent jurisdiction, recover the amount as a debt due to the Commonwealth.

“(2) Where a shipbuilder is liable to repay an amount to the Commonwealth under section 8, 9B, 9D or 9E, the amount may be deducted from any other amount payable to the person under this Act and, where the first-mentioned amount is so deducted, the first-mentioned amount shall be taken to be reduced by the amount so deducted and the other amount shall, notwithstanding the deduction, be taken to have been paid in full to the person.”.

Heading to Part IV

- 12. Before section 10 of the Principal Act the following heading is inserted:

“PART IV—ADMINISTRATION”.

- 13. Section 10 of the Principal Act is repealed and the following sections are substituted:

Registration of premises

“10. (1) Subject to this section, premises may be registered under this section for the purposes of this Act.

“(2) An application for the registration of premises under this section may be made to the Minister, in accordance with the appropriate approved form, by a person who carries out, or proposes to carry out, the construction or modification of bountiable vessels at the premises.

“(3) Subject to sub-sections (7), (9), (10) and (11), where an application for the registration of premises is made under sub-section (2) by a person who, in the opinion of the Minister, carries out, or proposes to carry out, the construction or modification of bountiable vessels at the premises, the Minister shall—

- (a) register the premises in the name of the person by—
 - (i) signing a notice, in writing, specifying the day on which it was signed and stating that the premises have been registered under this section; and
 - (ii) causing the notice to be served on the person; or
- (b) refuse to register the premises and cause a notice, in writing, stating that the Minister has refused to register the premises to be served on the person.

“(4) The registration of premises under this section has effect from—

- (a) the day on which the notice under paragraph (3) (a) in relation to the premises is signed; or
- (b) such earlier day, not being a day earlier than 10 December 1984, as is specified for the purpose in the notice.

“(5) A notice under sub-section (3) in relation to premises shall specify whether the premises are registered under this section in relation to—

- (a) all bountiable vessels;
- (b) a specified bountiable vessel or specified bountiable vessels; or
- (c) a specified class, or specified classes, of bountiable vessels,

and may specify a period as the period during which the premises are registered under this section.

“(6) The regulations may prescribe conditions to be met by an applicant for the registration of premises under this section in the name of the person, including, without limiting the generality of the foregoing, a condition requiring an applicant to be a person of a specified kind.

“(7) If conditions have been prescribed for the purposes of sub-section (6), the Minister shall not register premises under this section in the name of the person unless—

- (a) the Minister is satisfied that the conditions are, or will be, met by the person; or
- (b) registration of premises in the name of the person is otherwise permitted under the regulations.

“(8) The regulations may prescribe conditions to be complied with in connection with the construction or modification of bountiable vessels at registered premises.

“(9) If conditions have been prescribed for the purposes of sub-section (8), the Minister shall not register premises under this section unless—

- (a) the Minister is satisfied that the conditions have been, or will be, complied with in relation to the premises; or
- (b) registration of the premises is otherwise permitted under the regulations.

“(10) The Minister may require an applicant for the registration of premises under this section 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 the satisfaction of the Minister.

“(11) Where an applicant for the registration of premises under this section was not, on 11 October 1984, engaged in the construction or modification of bountiable vessels at the premises, the Minister shall refuse to register the premises unless, in the opinion of the Minister, the registration of the premises will permit the orderly development in Australia of the industry of constructing and modifying bountiable vessels.

“(12) Subject to sub-section (13), where—

- (a) premises are registered under this section; and
- (b) the person in whose name the premises are registered and a person (in this sub-section and sub-section (13) referred to as the ‘transferee’) who carries out, or proposes to carry out, the construction or modification of bountiable vessels at the premises make a joint application, in writing, to the Minister for the transfer of the registration of the premises to the name of the transferee,

the Minister shall transfer the registration of the premises to the name of the transferee by causing a notice, in writing, stating that the registration has been so transferred to be served on the transferee.

“(13) If conditions have been prescribed for the purposes of sub-section (6), the Minister shall not transfer the registration of the premises to the name of the transferee unless the Minister is satisfied that, if the transferee were an applicant for the registration of the premises under this section, the Minister would be authorized to register the premises in the name of the transferee.

“(14) A transfer under sub-section (12) has effect from such day as is specified in the notice under that sub-section in relation to the transfer, being a day not earlier than 10 December 1984 or 6 months before the day on which the application for the transfer was made, whichever last occurs.

“(15) Where, at any time, the Minister becomes satisfied, in respect of premises registered under this section—

- (a) that bountiable vessels are not being constructed or modified at those premises;
- (b) in a case where the premises are registered in relation to a particular vessel, particular vessels or a class of vessels—that vessel, one or more

of those vessels or a vessel included in that class of vessels, as the case may be, is or are not being constructed or modified at those premises;

- (c) that the construction or modification of bountiable vessels at those premises is being carried out by a person other than the person in whose name the premises are registered;
- (d) in a case where conditions have been prescribed for the purposes of sub-section (6)—that, if the person in whose name the premises are registered were, at that time, an applicant for the registration of the premises under this section, the Minister would not be authorized to register premises under this section in the name of the person; or
- (e) in a case where conditions have been prescribed for the purposes of sub-section (8)—if the person in whose name the premises are registered were, at that time, an applicant for the registration of the premises under this section, the Minister would not be authorized to register the premises under this section in the name of the person,

the Minister may cancel the registration of the premises by causing a notice, in writing, stating that the registration of the premises has been cancelled to be served on—

- (f) the occupier of those premises; and
- (g) if the occupier is not the person in whose name the premises are registered, the person in whose name the premises are registered.

“(16) For the purpose of the application of section 29 of the *Acts Interpretation Act 1901* to the service on a person by post of a notice under this section in relation to premises, such a notice posted as a letter addressed to the person at the premises shall be deemed to be properly addressed.

Registration of persons as prescribed shipbuilders

“10A. (1) Subject to this section, a person may be registered under this section as a prescribed shipbuilder for the purposes of this Act.

“(2) An application for registration under this section as a prescribed shipbuilder may be made to the Minister, in accordance with the appropriate approved form, by a person who arranges, or proposes to arrange, for the whole of the construction or modification of bountiable vessels to be carried out on behalf of the person by other persons at premises in Australia.

“(3) Subject to sub-sections (7), (9), (10) and (11), where an application for registration as a prescribed shipbuilder is made under sub-section (2) by a person (in this sub-section referred to as the ‘applicant’) who, in the opinion of the Minister, arranges for the whole of the construction or modification of bountiable vessels to be carried out on behalf of the applicant by other persons at premises in Australia, the Minister shall—

- (a) register the applicant as a prescribed shipbuilder by—
 - (i) signing a notice, in writing, specifying the day on which it was signed and stating that the applicant has been registered as a prescribed shipbuilder; and
 - (ii) causing the notice to be served on the applicant; or

- (b) refuse to register the applicant as a prescribed shipbuilder and cause a notice, in writing, stating that the Minister has refused to register the applicant as a prescribed shipbuilder to be served on the applicant.

“(4) The registration of a person under this section has effect from—

- (a) the day on which the notice under paragraph (3) (a) in relation to the person is signed; or
- (b) such earlier day, not being a day earlier than 10 December 1984, as is specified for the purpose in the notice.

“(5) A notice under sub-section (3) in relation to a person shall specify whether the person is registered under this section in relation to—

- (a) all bountiable vessels;
- (b) a specified bountiable vessel or specified bountiable vessels; or
- (c) a specified class, or specified classes, of bountiable vessels,

and may specify a period as the period during which the person is registered under this section.

“(6) The regulations may prescribe conditions to be met by an applicant for the registration of the person under this section, including, without limiting the generality of the foregoing, a condition requiring the applicant to be a person of a specified kind.

“(7) If conditions have been prescribed for the purposes of sub-section (6), the Minister shall not register the person under this section unless—

- (a) the Minister is satisfied that the conditions are, or will be, met by the person; or
- (b) registration of the person is otherwise permitted under the regulations.

“(8) The regulations may prescribe conditions to be complied with in connection with the construction or modification of bountiable vessels arranged by a prescribed shipbuilder.

“(9) If conditions have been prescribed for the purposes of sub-section (8), the Minister shall not register a person under this section unless—

- (a) the Minister is satisfied that the conditions have been, or will be, complied with by the person; or
- (b) registration of the person is otherwise permitted under the regulations.

“(10) The Minister may require an applicant for registration under this section to furnish such information as the Minister considers necessary for the purposes of this Act and may refuse to register the person until the information is furnished to the satisfaction of the Minister.

“(11) Where an applicant for registration under this section was not, on 11 October 1984, engaged in arranging for the whole of the construction or modification of bountiable vessels to be carried out on behalf of the person by other persons at premises in Australia, the Minister shall refuse to register the person unless, in the opinion of the Minister, the registration of the person will

permit the orderly development in Australia of the industry of constructing and modifying bountiable vessels.

“(12) Where, at any time, the Minister becomes satisfied, in respect of a person registered under this section—

- (a) that the person no longer arranges for the whole of the construction or modification of bountiable vessels to be carried out on behalf of the person by other persons at premises in Australia;
- (b) in a case where the person is registered in relation to a particular vessel, particular vessels or a class of vessels—that vessel, one or more of those vessels or a vessel included in that class of vessels, as the case may be, is or are not being constructed or modified on behalf of the person by other persons at premises in Australia; or
- (c) in a case where conditions have been prescribed for the purposes of sub-section (6) or (8)—that, if the person were, at that time, an applicant for registration under this section, the Minister would not be authorized to register the person under this section,

the Minister may cancel the registration of the person by causing a notice, in writing, stating that the registration of the person has been cancelled to be served on the person.”.

14. Sections 11 and 12 of the Principal Act are repealed and the following sections are substituted:

Accounts

“11. (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 in relation to the construction and modification (including the cost of the construction and modification) of bountiable vessels in respect of which bounty is, or may become, payable to the person as are specified by the Minister by notice published in the *Gazette*; and
 - (ii) such other particulars (if any) in relation to those vessels as are specified by the Minister 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 completion of the construction or modification, as the case may be, of those vessels.

“(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.

Securities

“12. The Minister may, by notice in writing served 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 the person with the provisions of this Act and the regulations, or for the purpose of an undertaking given by the person for the purposes of this Act or the regulations, and, where a person is so required to give security, the person is not entitled to bounty, or an advance on account of bounty, unless the person gives security in accordance with the requirement.

Shipbuilders to furnish returns

“12A. (1) Within 28 days after the end of each month of the year that falls, in whole or in part, during the period to which this Act applies, a shipbuilder shall lodge with the Comptroller-General or a Collector a return in relation to—

- (a) the bountiable vessels constructed or modified by the shipbuilder or constructed or modified on behalf of the shipbuilder, as the case requires; and
- (b) the bountiable vessels that the shipbuilder proposes to construct or modify or proposes will be constructed or modified on behalf of the shipbuilder, as the case requires,

being a return that complies with sub-section (2).

“(2) The return 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; and
- (c) be signed and witnessed as required by the form.

“(3) A shipbuilder shall not refuse or fail to comply with sub-section (1) to the extent that the shipbuilder is capable of complying with the sub-section.

Penalty: \$1,000.

“(4) A shipbuilder shall not lodge a return under sub-section (1) that is, to the knowledge of the shipbuilder, false or misleading in a material particular.

Penalty for contravention of this sub-section: \$1,000 or imprisonment for 6 months, or both.”.

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

15. Section 14 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “yards; or” and substituting “premises;”;
- (b) by inserting after paragraph (1) (b) the following word and paragraph:
 - “; or (ba) premises where there are kept any accounts, books, documents or other records relating to the construction or modification (including the cost of construction or modification) of any bountiable vessel;”;

- (c) by omitting paragraph (1) (e) and substituting the following:
 - “(e) inspect the accounts, books, documents and other records relating to the construction or modification of any bountiable vessel,
 - and may make and retain copies of, or take and retain extracts from, any such accounts, books, documents and other records”; and
- (d) by omitting from sub-section (2) “registered yards” and substituting “registered premises”.

Power to require persons to answer questions and produce documents

16. Section 15 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “on reasonable grounds” after “believes”;
- (b) by inserting in sub-section (1) “(including the cost of the construction or modification)” after “modification” (wherever occurring);
- (c) by inserting after sub-section (1) the following sub-sections:

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

“(1B) A person who, pursuant to a notice under sub-section (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.

Penalty: \$1,000 or imprisonment for 6 months, or both.”;

- (d) by omitting from sub-section (3) all the words after “liable” and substituting “to a penalty, but the answer of the person to any such question, or the production by the person of any such account, book, document or other record, is not admissible in evidence against the person in criminal proceedings other than proceedings under, or arising out of or by virtue of, sub-section (1B) or paragraph 17 (3) (a)”; and
- (e) by inserting in sub-section (4) “in writing” after “directs”.

Offences

17. Section 17 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “be sworn” and substituting “take an oath”; and
- (b) by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:

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

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

“(3) A person shall not—

- (a) make to an authorized person 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) present (otherwise than pursuant to sub-section 15 (1)) to an authorized person 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: \$1,000 or imprisonment for 6 months, or both.

“(4) A person shall not be convicted of an offence against or arising out of sub-section (2) and an offence against or arising out of sub-section 9B (1), or an offence against or arising out of sub-section (2) and an offence against or arising out of sub-section (3), in respect of the same claim for bounty.

“(5) A reference in sub-section (4) 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.

“(6) In this section, ‘bounty’ includes an advance on account of bounty under section 8.”.

18. After section 17 of the Principal Act the following sections are inserted:

Time for prosecutions

“17A. 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

“17B. (1) Where a person is convicted before a court of an offence against sub-section 9B (1) or 17 (2) or (3), the court may, in addition to imposing a penalty on the person, order the person to pay to the Commonwealth an

amount not exceeding the amount of bounty wrongfully obtained by the person.

“(2) Where—

(a) under sub-section (1), a court orders a person to pay an amount to the Commonwealth; 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) under sub-section (1), a court orders a person to pay an amount to the Commonwealth; and

(b) the court—

(i) does not have civil jurisdiction; or

(ii) has civil jurisdiction, but—

(A) does not have civil jurisdiction to the extent of the amount; or

(B) it is more appropriate for the order to be enforceable as a final judgment of another court,

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 paid to the Commonwealth.

“(5) Upon registration under sub-section (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.

“(7) In sub-section (1), ‘bounty’ includes an advance on account of bounty under section 8.”.

Heading to Part V

19. Before section 18 of the Principal Act the following heading is inserted:

“PART V—MISCELLANEOUS”.

Return for Parliament

20. Section 18 of the Principal Act is amended—

(a) by omitting from paragraph (1) (b) “and the number and kinds of bountiable vessels in respect of which the bounty was paid”; and

(b) by adding at the end the following sub-section:

“(3) In sub-section (1), ‘bounty’ includes an advance on account of bounty under section 8.”.

21. Section 20 of the Principal Act is repealed and the following sections are substituted:

Applications for review

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

- (a) a decision of the Comptroller-General by virtue of paragraph 9 (3) (a) approving payment of bounty;
- (b) a decision of the Comptroller-General by virtue of paragraph 9 (3) (b) refusing to approve payment of bounty;
- (c) a decision of the Comptroller-General by virtue of paragraph 9A (4) (a) approving a payment;
- (d) a decision of the Comptroller-General by virtue of paragraph 9A (4) (b) refusing to approve a payment;
- (e) a decision of the Comptroller-General under sub-section 9B (4);
- (f) a decision of the Comptroller-General by virtue of paragraph 9D (3) (a) approving a payment;
- (g) a decision of the Comptroller-General by virtue of paragraph 9D (3) (b);
- (h) a decision of the Comptroller-General by virtue of paragraph 9D (3) (c) refusing to adjust payments of bounty;
- (j) a decision of the Comptroller-General under section 9E;
- (k) a decision of the Minister under section 10 refusing to register premises (other than such a decision made under sub-section 10 (11));
- (m) a decision of the Minister under section 10 transferring, or refusing to transfer, the registration of premises;
- (n) a decision of the Minister under sub-section 10 (15) cancelling the registration of premises;
- (p) a decision of the Minister under section 10A refusing to register a person (other than such a decision made under sub-section 10A (11));
- (q) a decision of the Minister under sub-section 10A (12) cancelling the registration of a person; or
- (r) a requirement by the Minister under section 12.

“(2) Without limiting the generality of section 43 of the *Administrative Appeals Tribunal Act 1975*, where the Administrative Appeals Tribunal is reviewing a decision of a kind referred to in paragraph (1) (a), (b), (c), (d), (e), (f), (g), (h) or (j) of this section in respect of the construction or

modification of a bountiable vessel, the Tribunal, if it considers it appropriate to do so, may—

- (a) if a determination has been made by virtue of paragraph 3 (2) (b) in respect of the construction or modification of the vessel, either—
 - (i) set aside the determination; or
 - (ii) set aside the determination and make a further determination by virtue of that paragraph in respect of the construction or modification of the vessel;
- (b) if a determination has not been made by virtue of paragraph 3 (2) (b) in respect of the construction or modification of the vessel, make such a determination;
- (c) if a determination has been made under sub-section 4A (1) in respect of the construction or modification of the vessel, either—
 - (i) set aside the determination; or
 - (ii) set aside the determination and make a further determination under that sub-section in respect of the construction or modification of the vessel;
- (d) if a determination has not been made under sub-section 4A (1) in respect of the construction or modification of the vessel, make such a determination;
- (e) if a determination has been made by virtue of paragraph 6 (2) (c) in respect of the construction or modification of the vessel, either—
 - (i) set aside the determination; or
 - (ii) set aside the determination and make a further determination by virtue of that paragraph in respect of the construction or modification of the vessel;
- (f) if a determination has not been made by virtue of paragraph 6 (2) (c) in respect of the construction or modification of the vessel, make such a determination;
- (g) if a determination has been made by virtue of sub-section 6A (2) in respect of the construction or modification of the vessel, either—
 - (i) set aside the determination; or
 - (ii) set aside the determination and make a further determination under that sub-section in respect of the construction or modification of the vessel; or
- (h) if a determination has not been made under sub-section 6A (2) in respect of the construction or modification of the vessel, make such a determination.

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

Statement to accompany notice of decisions

“20A.(1) Where the Minister or the Comptroller-General makes a decision or requirement of a kind referred to in sub-section 20 (1) and gives to the person or persons whose interests are affected by the decision or requirement

notice in writing of the making of the decision or requirement, 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 or requirement.

“(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

22. Section 21 of the Principal Act is amended by adding at the end the following sub-section:

“(2) In sub-section (1), ‘bounty’ includes an advance on account of bounty under section 8.”.

23. Section 22 of the Principal Act is repealed and the following section is substituted:

Regulations

“22. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

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

Transitional provisions

24. (1) Subject to sub-section (2), notwithstanding the amendments of the Principal Act made by this Act, the Principal Act, and the regulations in force under that Act at the commencement of this Act, continue to apply to vessels that were in the course of construction or modification at the commencement of this Act as if those amendments had not been made.

(2) Where—

- (a) the construction or modification of a vessel was commenced before the commencement of this Act and completed on or after 10 December 1984;
- (b) the vessel is or was, at the time of the completion of the construction or modification of the vessel, intended by the owner of the vessel to be exported from Australia; and
- (c) the vessel was not, at any time before 10 December 1984, intended by the owner of the vessel to be exported from Australia,

the Principal Act as amended by this Act applies to the vessel.

Bounty (Ships) Amendment No. 76, 1985

NOTE

1. No. 48, 1980, as amended. For previous amendments, see Nos. 26 and 145, 1982.

*[Minister's second reading speech made in—
House of Representatives on 17 April 1985
Senate on 29 May 1985]*