



Bounty (Ship Repair) Act 1986

No. 128 of 1986

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Bounty (Ship Repair) Act 1986

No. 128 of 1986

An Act to provide for the payment of bounty on the production, by way of repair, of certain ships

[Assented to 9 December 1986]

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

- 5 **1.** This Act may be cited as the *Bounty (Ship Repair) Act 1986*.

Commencement

- 2.** This Act shall be deemed to have come into operation on 10 October 1986.

General administration of Act

- 10 **3.** The Comptroller has the general administration of this Act.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“approved form” means a form approved by the Comptroller in writing;

“authorised officer” means a person who is an authorised officer for the purposes of this Act by virtue of an appointment under section 22;

“bountiable ship” means a ship (including a ship registered in, or entitled to fly the flag of, a foreign country) the deadweight of which exceeds 6,000 tonnes, but does not include—

- (a) a ship of the Royal Australian Navy;
- (b) a ship solely engaged in the Australian coastal trade; or
- (c) an off-shore industry vessel, or an off-shore industry mobile unit, within the meaning of the *Navigation Act 1912*;

“bounty” means bounty under this Act;

“bounty period” means the period commencing on 10 October 1986 and ending on 9 October 1989;

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

“Comptroller” means the Comptroller-General of Customs;

“eligible repair”, in relation to a bountiable ship, means—

- (a) the repair of the structure of the ship;
- (b) a repair of the ship specified in paragraphs (a) to (e) (inclusive) of the definition of “repair”; or
- (c) a repair of the ship included in a class of repairs declared by the regulations to be a class of eligible repairs;

“registered repairer” means a person registered by the Minister under section 19;

“relevant repair”, in relation to a bountiable ship, means a repair of the ship in respect of which bounty is, or could become, payable and, in relation to the exercise of the powers of an authorised officer, includes a repair which the officer believes on reasonable grounds is such a repair;

“repair”, in relation to a ship, includes—

- (a) the repair, modification or conversion of an engine of the ship;
- (b) the repair, modification or conversion of an electronic system, an electrical system, a communications system, an hydraulic system or any other system of the ship;
- (c) the painting of the ship;
- (d) the refurbishing or upgrading of the accommodation on the ship; and
- (e) the dry docking of the ship;

“repair contract” means a contract between a repairer and the owner or agent of a ship under which the repairer is to carry out a repair or repairs of the ship, but does not include—

- (a) a contract between a repairer and an associate of the repairer; and
- (b) a contract between a repairer and the agent of a ship owned by the repairer or by an associate of the repairer;

“repairer” means a person who carries out the repair of bountiable ships;

“service contract” means—

- (a) a contract between a repairer and the owner of a ship or ships under which the repairer is to carry out, during a particular period, repairs of the ship or ships; or
- (b) a contract between a repairer and the agent of a ship, or ships, owned by the one person under which the repairer is to carry out, during a particular period, repairs of the ship or ships,

but does not include—

- (c) a contract between a repairer and an associate of the repairer; and
- (d) a contract between a repairer and an agent of a ship, or ships, owned by the repairer or by an associate of the repairer;

“service period”, in relation to a repairer, has the meaning given by section 6;

“ship” means a vessel used in navigation by water.

(2) For the purposes of this Act, work carried out, or services provided, by a person on behalf of a repairer shall be taken to have been carried out, or provided, by the repairer.

(3) 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.

Repairs on certain voyages taken to be carried out in Australia

5. For the purposes of this Act, an eligible repair of a bountiable ship shall be taken to be carried out in Australia if the repair is carried out during—

- (a) a direct voyage of the ship between places in Australia; or
- (b) a direct voyage of the ship from, and back to, a place in Australia.

Service periods

6. A repairer who has entered into a service contract may give the Comptroller notice in writing that the repairer wishes a specified period, or specified periods, of 12 months occurring during the period during which the contract is in force (not being a period or periods any part of which is concurrent with any part of another period of which notice is given under this section in relation to the contract) to be a service period, or service periods, of the repairer for the purposes of the contract and, where the repairer does so, that period or those periods shall, for the purposes of this Act, be a service period, or service periods, of the repairer for the purposes of that contract.

Cost of repair

7. (1) Subject to section 8, the cost of an eligible repair or eligible repairs of a bountiable ship shall, for the purposes of this Act, be taken to be the price paid for the repair or repairs under the contract pursuant to which the repair was, or the repairs were, carried out.

(2) For the purposes of this Act, where a repairer receives from the Commonwealth, a State or a Territory or an authority of the Commonwealth or of a State or Territory a grant in respect of—

- (a) the eligible repair of a bountiable ship; or
 - (b) the eligible repair of bountiable ships during a period,
- then—
- (c) where paragraph (a) applies—the cost of the eligible repair of the ship shall be reduced by the amount of the grant; or
 - (d) where paragraph (b) applies—in the case of each eligible repair of the ships, the cost of the repair shall be reduced by an amount that bears to the amount of the grant the same proportion as the amount of the cost of the repair bears to the sum of the cost of the eligible repairs of those ships during that period.

Determination of cost

8. Where the Comptroller—

- (a) is unable to verify the cost of an eligible repair of a bountiable ship; or
- (b) forms the opinion that, having regard to sound accounting principles, the price by reference to which the cost of an eligible repair of a bountiable ship was ascertained—
 - (i) is incorrect;
 - (ii) is higher than would have been the case if the repairer of the ship had not marginally priced or similarly disproportionately priced the repair of goods 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 price paid by other persons for similar repairs;
 - (v) has been increased as the result of the influence of a relationship between the repairer of the ship and an associate of the repairer; or
 - (vi) is higher than would have been the case if the repairer of the ship had provided services that were provided, and charged for, by an associate of the repairer,

the Comptroller may, by writing signed by him or her, determine the cost of the eligible repair of the bountiable ship, being the cost that, having regard to all relevant circumstances, the Comptroller considers to be appropriate, and the cost of the eligible repair shall, for the purposes of this Act, be the cost so determined.

Uniformity

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

PART II—BOUNTY

Specification of bounty

10. (1) Bounty is payable in accordance with this Act on the production, that is to say, the carrying out of eligible repairs, in Australia of bountiable ships.

(2) Bounty in respect of an eligible repair of a bountiable ship is payable to the repairer of the ship.

(3) A repairer who carries out an eligible repair of a bountiable ship is not entitled to receive a payment of bounty in respect of the repair unless—

- (a) the repairer is registered under section 19 as a registered repairer in respect of all bountiable ships or of a class of ships in which the ship is included;

- (b) all steps in the repair are carried out during—
 - (i) a period during which the repairer is so registered; and
 - (ii) the bounty period;
- (c) the repair is carried out pursuant to a repair contract or service contract;
- (d) where the repair contract or service contract is in writing—the amount of bounty is reserved, in accordance with the regulations referred to in sub-section 12 (2), in relation to the ship;
- (e) where the repair is carried out pursuant to a repair contract—the cost of the eligible repairs in respect of which, apart from this paragraph, bounty would be payable that are carried out pursuant to the contract exceeds \$100,000; and
- (f) where the repair is carried out pursuant to a service contract—the cost of the eligible repairs in respect of which, apart from this paragraph, bounty would be payable that are carried out pursuant to the contract during the service period of the repairer for the purposes of the contract during which all the steps in the repair are carried out exceeds \$100,000.

(4) Where the repair of a bountiable ship pursuant to a repair contract is commenced during the period commencing on 10 October 1986 and ending on 31 December 1986 and completed after that period, the repair shall, for the purposes of this Act (other than paragraphs 14 (2) (d) and 15 (2) (d)), be deemed to have been completed on 31 December 1986.

Bounty not payable if ship detained

11. (1) If the Minister becomes satisfied that a voyage of a ship is being prevented or delayed by an activity of an organisation of employees for reasons relating directly or indirectly to the repair of ships, the Minister may, by writing signed by the Minister, declare that bounty shall cease to be payable.

(2) Notwithstanding any other provision of this Act, bounty is not payable in respect of any eligible repair commenced while a declaration is in force.

(3) For the purposes of sub-section (2), where the dry-docking of a ship for the purpose of a known eligible repair being carried out has been commenced (whether or not it has been completed), that known eligible repair shall be taken to have been commenced.

(4) Where a declaration is in force during the service period of a repairer for the purposes of a service contract, paragraph 10 (3) (f) does not apply in relation to eligible repairs carried out by that repairer pursuant to that contract during that service period.

Limit of bounty

12. (1) The amount available for payment of bounty is \$6,000,000.

(2) The regulations (in this section referred to as the “reservation regulations”) shall make provision for and in relation to the reservation of

amounts available for payment of bounty in respect of eligible repairs of bountiable ships carried out pursuant to repair contracts or service contracts that are in writing.

(3) The regulations may prescribe the maximum amount that may be reserved for payment of bounty in respect of the eligible repairs carried out pursuant to a repair contract or a service contract.

(4) Amounts may be reserved in accordance with the reservation regulations notwithstanding that, at the time when the application for the reservation is dealt with, funds are not available for the payment of bounty or the sum of the amounts reserved exceeds \$6,000,000.

(5) Notwithstanding any other provision of this Act, if the Comptroller is of the opinion that the amount available in a financial year commencing before 1 July 1989 for payment of bounty will be insufficient to meet all valid claims for the payment of bounty in that year, the Comptroller may, subject to the regulations—

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

(6) Notwithstanding any other provision of this Act, if the Comptroller is of the opinion that the amount (in this sub-section referred to as the “relevant amount”) available in the financial year commencing on 1 July 1989 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 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.

(7) Notwithstanding any other provision of this Act, payments of additional bounty approved under paragraph 15 (4) (a) shall not be made unless and until all payments of bounty approved under paragraph 14 (3) (a) in the financial year commencing on 1 July 1989 have been made and, if the amount available for payment of additional bounty is insufficient to make all payments of additional bounty, the payments shall be made in such order as is determined by the Comptroller in writing and, when the aggregate of the amounts of additional bounty paid equals the amount available, no further amounts of additional bounty are payable.

(8) The amount available for payment of bounty in respect of eligible repairs of bountiable ships carried out pursuant to contracts that are not in writing is the amount by which the amount available for the payment of bounty under sub-section (1) exceeds the sum of the amounts reserved in accordance with the regulations referred to in sub-section (2).

(9) 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.

Rate of bounty

13. (1) The bounty payable in respect of the eligible repairs of a ship carried out pursuant to a repair contract is—

- (a) where the cost of the repairs does not exceed \$400,000—the amount equal to 30% of that cost; or
- (b) where that cost exceeds \$400,000—the sum of \$120,000 and the amount equal to 20% of the difference between that cost and \$400,000.

(2) The bounty payable in respect of the eligible repairs of a ship or ships carried out by a repairer pursuant to a service contract during a service period of the repairer for the purposes of the contract is—

- (a) where the cost of the repairs does not exceed \$400,000—the amount equal to 30% of that cost; or
- (b) where that cost exceeds \$400,000—the sum of \$120,000 and an amount equal to 20% of the difference between that cost and \$400,000.

PART III—PAYMENT OF BOUNTY

Claims for payment of bounty

14. (1) A person who claims to be entitled to be paid an amount of bounty may lodge a claim for payment to the person of the amount.

(2) A claim under sub-section (1) in respect of an eligible repair 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 18; and
- (d) be lodged with a Collector for a State, or with the Comptroller, within 3 months after the repair was completed.

(3) As soon as practicable after the lodgment of the claim, the Comptroller shall, after examining the claim and causing such inquiries as the Comptroller considers necessary to be made (including inquiries involving the exercise of powers under sections 23 and 26)—

- (a) if the Comptroller 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 eligible repair to which the claim relates—

- (i) except where sub-paragraph (ii) applies—approve, in writing, payment of the amount; or

- (ii) where—

- (A) the amount is different from the amount for which the claim was made;

- (B) the difference between those amounts is less than \$50; and
- (C) the Comptroller is satisfied that the difference is not attributable to the person who made the claim deliberately overclaiming or underclaiming the amount of bounty,

approve, in writing, payment of the amount claimed; or

- (b) if the Comptroller is not so satisfied—refuse, in writing, to approve payment of bounty in respect of the goods to which the claim relates.

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

Variation of inadequate claim

15. (1) Where a person who has lodged a claim under section 14 (whether or not the claim has been dealt with under sub-section 14 (3)) considers that the claim was, because of an inadvertent error, a claim for an amount of bounty in respect of an eligible repair that was less than the amount of bounty that the person was entitled to claim in respect of the repair, the person may lodge a claim for payment to the person of the difference between the 2 amounts.

- (2) A claim under sub-section (1) in respect of an eligible repair 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 18; and
 - (d) be lodged with a Collector for a State, or with the Comptroller, within 3 months after the completion of the repair.

(3) Where a claim under sub-section (1) relates to a claim under section 13 that has not been dealt with under sub-section 14 (3), the 2 claims shall be dealt with under sub-section 14 (3) as if they were one claim under section 13.

(4) As soon as practicable after the lodgment of a claim under sub-section (1) to which sub-section (3) does not apply, the Comptroller shall, after examining the claim and causing such inquiries as the Comptroller considers necessary to be made (including inquiries involving the exercise of powers under sections 23 and 26)—

- (a) if the Comptroller 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 an eligible repair to which the claim relates—approve, in writing, payment of the additional amount; or

- (b) if the Comptroller is not so satisfied—refuse, in writing, to approve payment of an additional amount of bounty in respect of the eligible repair to which the claim relates.

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

Variation of excessive claim

16. (1) Where a person who has lodged a claim under section 14 (whether or not the claim has been dealt with under sub-section 14 (3)) becomes aware that the claim is for an amount of bounty in respect of an eligible repair that exceeds the amount of bounty that the person was entitled to claim in respect of that repair by more than \$100, the person shall, within 28 days after discovering the excess, lodge an acknowledgment of the excess, being an acknowledgment that complies with sub-section (2).

Penalty:

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

(2) An acknowledgment under sub-section (1) in respect of an eligible repair shall—

- (a) be in accordance with the appropriate 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 18; and
- (d) be lodged with a Collector for a State or with the Comptroller.

(3) Where an acknowledgment relates to a claim under section 14 that has not been dealt with under sub-section 14 (3), the claim shall be dealt with under that sub-section as if it had been amended in accordance with the acknowledgment.

(4) Where the Comptroller, after examining an acknowledgment under sub-section (1) to which sub-section (3) does not apply and causing such inquiries as the Comptroller considers necessary to be made (including inquiries involving the exercise of powers under sections 23 and 26), is satisfied that there has been an overpayment of a claim by more than \$100, the Comptroller shall cause to be served on the person who lodged the claim a demand for the repayment of the amount of the overpayment, and that person is liable to repay that amount to the Commonwealth.

Other adjustments of claims

17. (1) Subject to sub-section (2), if the Comptroller becomes satisfied, otherwise than after examining an acknowledgment under sub-section 16 (1) that there has been an overpayment of a claim for bounty by more than \$100, the Comptroller shall cause to be served on the person who lodged the claim a demand for repayment of the amount of the overpayment, and that person is liable to repay that amount to the Commonwealth.

(2) Where—

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

(b) the Comptroller 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,

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

(3) Where, in accordance with sub-section (2), the Comptroller refrains from causing a demand for repayment of the amount of an overpayment to be served in accordance with sub-section (1), particulars of the amount shall be included in the return under section 32 for the year in which the Comptroller so refrained.

Forms

18. (1) Where, under this Act, a claim or acknowledgment 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, 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.

PART IV—ADMINISTRATION

Registration of persons

19. (1) Subject to this section, a person may be registered under this section as a registered repairer for the purposes of this Act.

(2) An application for registration under this section as a registered repairer 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 eligible repair of bountiable ships in Australia.

(3) Subject to sub-sections (7), (9), (10) and (11), where an application for registration 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, carries out, or proposes to carry out, the eligible repair of bountiable ships in Australia, the Minister shall—

- (a) register the applicant as a registered repairer 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 registered repairer; and

- (ii) causing the notice to be served on the applicant; or
- (b) refuse to register the applicant as a registered repairer and cause a notice, in writing, stating that the Minister has refused to register the applicant as a registered repairer to be served on the applicant.
- (4) The registration of a person under this section has effect from and including—
 - (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 October 1986, 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 ships; or
 - (b) a specified class, or specified classes, of bountiable ships,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 registration under this section including, without limiting the generality of the foregoing, a condition requiring the applicant to be a person included in a specified class of persons.
- (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 for those purposes is otherwise permitted under the regulations.
- (8) The regulations may prescribe conditions to be complied with in connection with the eligible repair of bountiable ships.
- (9) If conditions have been prescribed for the purposes of sub-section (8), the Minister shall not register a person under this section for the purposes of that scheme 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 for those purposes is otherwise permitted under the regulations.
- (10) The Minister may require an applicant for registration under this section to give such information as the Minister considers necessary for the purposes of this Act and may refuse to register the person until the information is given to the satisfaction of the Minister.
- (11) Where an applicant for registration under this section was not, on 9 October 1986, engaged in the business of carrying out the eligible repair of bountiable ships in Australia, the Minister shall not register that person

if the Minister is of the opinion that the registration of that person will not permit the orderly development in Australia of the industry of the eligible repair of bountiable ships.

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

- (a) that the person no longer carries out the eligible repair of bountiable ships in Australia;
- (b) in a case where the person is registered in relation to a class of bountiable ships, that the person no longer carries out the eligible repair of bountiable ships in that class 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 authorised to register the person under this section,

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

(13) Subject to sub-section (12), a ship repairer who commences the eligible repair of a bountiable ship in Australia during the period commencing on 10 October 1986 and ending on 31 December 1986 shall be taken to be registered under this section during that period.

Accounts

20. (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 eligible repair (including the cost of the eligible repair) of bountiable ships in respect of which bounty is, or may become, payable as are specified by the Comptroller in a notice published in the *Gazette*; and
 - (ii) such other particulars (if any) in relation to the repair as are specified by the Comptroller 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 sub-section 14 (1) for bounty was made in respect of the repair 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.

Securities

21. The Comptroller 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 Comptroller, 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 unless the person gives security in accordance with the requirement.

Appointment of authorised officers

22. (1) The Comptroller may, by writing signed by him or her, appoint—

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

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

(2) In sub-section (1), “officer” means an Officer of Customs within the meaning of the *Customs Act 1901*.

Inspection of production and accounts, &c.

23. (1) For the purposes of this Act, an authorised officer may, at all reasonable times, enter premises occupied by a registered repairer, other than residential premises, and may—

- (a) inspect any bountiable ship on which relevant repairs have been, are being, or are intended to be, carried out;
 - (b) inspect any step in the relevant repair of a bountiable ship; and
 - (c) inspect the accounts, books, documents and other records relating to the relevant repair of a bountiable ship,
- and may make and retain copies of, or take and retain extracts from, any such accounts, books, documents and other records.

(2) The occupier or person in charge of premises that may be entered under sub-section (1) shall provide the authorised officer with all reasonable facilities and assistance for the effective exercise of the powers of the officer under this section.

Penalty:

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

Entry on premises

24. (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises and exercise the functions of an authorised officer under this section in relation to those premises.

(2) Where an authorised officer has reasonable grounds for believing that premises are—

- (a) premises where there is a bountiable ship on which relevant repairs have been, are being, or are intended to be, carried out;
- (b) premises on which any step in the relevant repair of a bountiable ship is taking, or is intended to take, place; or
- (c) premises where there are kept any accounts, books, documents or other records relating to the relevant repair of bountiable ships,

the authorised officer may make an application to a Justice of the Peace for a warrant authorising the authorised officer to enter the premises and to exercise the functions of an authorised officer under this section in relation to those premises.

(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied, by information on oath or affirmation, that—

- (a) there is reasonable ground for believing that the premises to which the application relates are premises referred to in paragraph (2) (a), (b) or (c);
- (b) those premises are not premises that may be entered under sub-section 23 (1); and
- (c) the occupier of the premises has not given consent for the authorised officer to enter the premises and exercise the functions of an authorised officer under this section in relation to those premises,

the Justice of the Peace shall grant a warrant authorising the authorised officer, with such assistance as the authorised officer thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies, or, if the warrant so specifies, at any time, and if necessary by force, and to exercise the functions of an authorised officer under this section in relation to those premises.

(4) The functions of an authorised officer under this section in relation to premises are—

- (a) to inspect any bountiable ship on which relevant repairs have been, are being, or are intended to be, carried out;
- (b) to inspect any step in the relevant repair of a bountiable ship; and
- (c) to inspect accounts, books, documents and other records relating to the relevant repair of a bountiable ship,

and extend to making and retaining copies of, or taking and retaining extracts from, any such accounts, books, documents and other records.

Boarding ships

25. (1) An authorised officer may board any ship which the officer has reasonable grounds for believing is a bountiable ship on which relevant repairs have been, are being, or are intended to be, carried out and may—

- (a) inspect the ship;
- (b) inspect any step in the relevant repair of the ship; and
- (c) inspect the accounts, books, documents and other records relating to the relevant repair of the ship,

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

(2) The owner or master of a ship that may be boarded under sub-section (1) shall provide the authorised officer with all reasonable facilities and assistance for the effective exercise of the powers of the officer under this section.

Penalty:

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

Power to require persons to answer questions and produce documents

26. (1) A Collector or an authorised officer may, by notice signed by him or her, require a person whom he or she believes on reasonable grounds to be capable of giving information relevant to the operation of this Act in relation to the relevant repair of a bountiable ship, to attend at a reasonable time and place specified in the notice and there to answer questions and to produce such accounts, books, documents and other records in relation to the repair as are referred to in the notice.

(2) 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 (3).

(3) 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:

- (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) A Collector or an authorised officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced pursuant to this section.

(5) A person is not excused from answering a question or producing any accounts, books, documents or other records when required so to do under

this section on the ground that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate the person or make the person liable to a penalty, but the answer of the person to any such question, the production by the person of any such account, book, document or other record, or any information or thing (including any account, book, document or other record) obtained as a direct or indirect consequence of the answer or the production, 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 (3) or paragraph 28 (3) (a).

(6) Where a registered repairer, or a person employed by a registered repairer, has failed to attend or to answer a question, or to produce any account, book, document or other record, when required so to do under this section, bounty is not payable to the repairer, unless the Comptroller otherwise directs in writing, until the repairer or that person, as the case may be, has attended, answered the question or produced the account, book, document or other record, as the case may be.

Power to examine on oath, &c.

27. (1) A Collector or an authorised officer may examine, on oath or affirmation, a person attending in pursuance of section 26 and, for that purpose, may administer an oath or affirmation to the person.

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

Offences

28. (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 pursuant to 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 false or misleading in a material particular; or
- (b) knowingly or recklessly present (otherwise than pursuant to sub-section 26 (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 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 sub-section (2) or (3) in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body, it is sufficient to show that a director, servant or agent of the body, being a director, servant or agent by whom the conduct was engaged in 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 body corporate—

- (a) by a director, servant or agent of the body 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 body, where the 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 sub-sections (2) and (3), to have been engaged in by the body.

(6) A reference in sub-section (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 sub-section (2) and an offence against or arising out of sub-section 16 (1); or
- (b) both 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.

(8) A reference in sub-section (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 the person in respect of an offence.

(9) An offence against sub-section (2) is an indictable offence.

(10) Notwithstanding that an offence against sub-section (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 sub-section (10), a court of summary jurisdiction convicts a person of an offence against sub-section (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

29. Notwithstanding anything in any other law, proceedings for an offence against this Act may be instituted within the period of 3 years after the commission of the offence.

Recovery of bounty on conviction

30. (1) Where a person is convicted of an offence against sub-section 16 (1) or 28 (2) or (3), the court may, in addition to imposing a penalty under that sub-section, order the person to refund to the Commonwealth the amount of any bounty wrongfully obtained by the person because of the commission of the offence.

(2) Where—

- (a) a court makes an order under sub-section (1) ordering a person to refund to the Commonwealth the amount of any 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 sub-section (1) ordering a person to refund to the Commonwealth the amount of any bounty; and
- (b) the court—
 - (i) does not have civil jurisdiction; or
 - (ii) has civil jurisdiction otherwise than to the extent of the amount,

the proper officer of the court shall issue to the Comptroller 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 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.

Recovery of repayments

31. (1) Where a person is liable to repay an amount to the Commonwealth under sub-section 16 (4) or 17 (1), the Commonwealth may recover that amount as a debt due to the Commonwealth by action in a court of competent jurisdiction.

(2) Where a person is liable to repay an amount to the Commonwealth under sub-section 16 (4) or 17 (1), that amount may be deducted from any other amount that is payable to the person under this Act and, where the first-mentioned amount is so deducted, the other amount shall, notwithstanding the deduction, be deemed to have been paid in full to the person.

PART V—MISCELLANEOUS

Return for Parliament

32. (1) The Comptroller shall, as soon as practicable after the end of each financial year, give to the Minister a return setting forth—

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

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

Delegation

33. (1) The Minister may, either generally or otherwise as provided in the instrument of delegation, by writing signed by him or her, delegate to an Officer of Customs within the meaning of the *Customs Act 1901* all or any of his or her powers under this Act or the regulations, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

Application for review

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

- (a) a decision of the Comptroller under paragraph 14 (3) (a) approving payment of bounty;

- (b) a decision of the Comptroller under paragraph 14 (3) (b) refusing to approve payment of bounty;
- (c) a decision of the Comptroller under paragraph 15 (4) (a) approving a payment;
- (d) a decision of the Comptroller under paragraph 15 (4) (b) refusing to approve a payment;
- (e) a decision of the Comptroller for the purposes of sub-section 16 (4);
- (f) a decision of the Comptroller for the purposes of sub-section 17 (1);
- (g) a decision of the Minister under section 19 refusing to register a person (other than such a decision made under sub-section 19 (11));
- (h) a decision of the Minister for the purposes of sub-section 19 (4);
- (j) a decision of the Minister under sub-section 19 (12) cancelling the registration of a person; or
- (k) a requirement by the Comptroller under section 21.

(2) Without limiting section 43 of the *Administrative Appeals Tribunal Act 1975*, where the Administrative Appeals Tribunal is reviewing a decision referred to in paragraph (1) (d), (e), (f), (g), (h) or (j) in respect of a repair, the Tribunal, if it considers it appropriate to do so, may—

- (a) if a determination under section 8 has been made in respect of that repair, either—
 - (i) set aside that determination; or
 - (ii) set aside that determination and make a further determination under that section in respect of the repair to which the determination so set aside applied; or
- (b) if a determination under that section has not been made in respect of the repair to which the decision applies, make a determination under that section in respect of the repair to which the decision applies.

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

Statement to accompany notice of decisions

35. (1) Where the Comptroller makes a determination, decision or requirement of a kind referred to in sub-section 34 (1) and gives to the person or persons whose interests are affected by the determination, decision or requirement notice in writing of the making of the determination, 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 determination, decision or requirement to which the notice relates by or on behalf of the person or persons whose interests are affected by the determination, decision or requirement.

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

Appropriation

36. Payments of bounty shall be made out of money appropriated by the Parliament for the purpose.

Transitional

- 5 37. Sections 23, 25, 26 and 28 do not operate so as to render unlawful anything done, or omitted to be done, before the day on which this Act receives the Royal Assent.

Regulations

- 10 38. 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.

*[Minister's second reading speech—
made in Senate on 12 November 1986
Bill read a second time in House of Representatives
on 26 November 1986]*