

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**BOUNTY (SHIPS) BILL 1989**

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 5 April 1989

*(Minister for Science, Customs and Small Business)*

**A BILL**

FOR

**An Act to provide for the payment of bounty on the  
production of certain ships and other vessels**

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

**PART 1—PRELIMINARY**

**Short title**

5       1. This Act may be cited as the *Bounty (Ships) Act 1989*.

**Commencement**

2. This Act commences, or shall be taken to have commenced, as the case requires, on 1 July 1989.

**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 20;

“bountiable vessel” means a vessel:

(a) that is of more than 150 but not more than 10,000 gross construction tons;

(b) that is designed for use in navigation (other than air navigation); and

(c) that has, as its means of propulsion, an inbuilt propulsion system, or sails, or a combination of an inbuilt propulsion system and sails, that will enable it to propel itself at navigable speed without reliance on a connection to the land or to another vessel;

and includes an air cushion vehicle other than a prescribed air cushion vehicle;

“bounty” means bounty under this Act;

“Collector”, in relation to a State or Territory, has the same meaning as in the *Customs Act 1901*;

“Commonwealth authority” means an authority or body established for a purpose of the Commonwealth by or under a law of the Commonwealth (including an Ordinance of the Australian Capital Territory);

“Comptroller” means the Comptroller-General of Customs;

“modification”, in relation to a vessel, means changing the structure or specification of the vessel to alter its capacity or capability, but does not include any changing of that structure or specification before the construction of the vessel has been completed;

“period to which this Act applies” means the period from and including 1 July 1989 to and including 30 June 1995;

“prescribed air-cushion vehicle” means an air-cushion vehicle, or other similar craft that:

(a) is designed to be used wholly or principally on or over land or wetlands;

(b) not being a fishing vessel of the kind that, because of section 13 of the *Fishing Registration Act 1981*, is not required to be registered under section 12 of that Act; or

(c) if it were imported into Australia, would not be a vessel to which heading 8901, 8902, 8903 or 8906 in Schedule 3 of the Tariff Act would apply;

“registered shipbuilder” means a person registered as a shipbuilder by the Minister under section 17;

“relevant activity”, in relation to a bountiable vessel, means an activity relating to the construction or modification of the vessel, being the construction or a modification in respect of which bounty is, or could become, payable and, in relation to the exercise of the powers of an authorised officer, includes an activity that the officer believes on reasonable grounds is such an activity;

“Tariff Act” means the *Customs Tariff Act 1987*.

(2) The construction or modification of a bountiable vessel shall be taken, for the purposes of this Act, to have been completed on such date as the Comptroller determines to be the date on which that construction or modification was completed.

(3) The number of tons in the gross construction tonnage of a vessel shall be ascertained, for the purposes of this Act, in accordance with the formula:

$$\frac{Z}{2.83}$$

where *Z* is a number equal to the number of cubic metres in the total volume, measured in relation to their moulded lines, of the enclosed spaces in the vessel, including between-deck spaces, water ballast spaces, voids, cofferdams, machinery spaces, erections, superstructures, houses, casings, funnel spaces, mast spaces and, in the case of an air-cushion vehicle, the area enclosed by the inflatable skirt under normal inflation.

(4) The modification of a vessel that, before the modification, was not, but, after and by reason of the modification, is, a bountiable vessel shall be taken, for the purposes of this Act, to be the modification of a bountiable vessel.

(5) 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

(6) Where the Tariff Act is proposed to be altered by a Customs Tariff alteration proposed in the Parliament in such a way that Schedule 3 to that Act would be amended, or would be deemed to have been amended, on a particular day, that Act shall, for the purposes of this Act, be deemed to have been so amended on that day. 10

(7) A reference in this Act to costs incurred by a shipbuilder undertaking the construction or modification of a bountiable vessel in a particular period is a reference to an amount that has become payable by the shipbuilder in the period, whether or not it is paid in the period.

#### **Costs of construction or modification** 15

5. (1) For the purposes of this Act, the eligible costs of the construction or modification of a bountiable vessel shall be taken to be:

- (a) the design costs incurred by the shipbuilder in respect of the production of the vessel, not being costs referred to in paragraph (b) or (d); 20
- (b) so much of the direct labour costs incurred in Australia by the shipbuilder in relation to employees who are actually engaged in the production of the vessel as are directly referable to the production of the vessel;
- (c) the direct material costs incurred by the shipbuilder in respect of goods that are actually incorporated in the vessel or in the modification of the vessel, as the case requires; 25
- (d) subcontracting costs incurred by the shipbuilder in respect of work carried out by a person other than a registered shipbuilder, being work that is directly connected with the production of the vessel in Australia; 30
- (e) where, in the contract for the production of the vessel, provision is made for the fitting out of the vessel:
  - (i) so much of the labour costs incurred in Australia by the shipbuilder in relation to employees who are actually engaged on the fitting out of the vessel as is directly referable to that fitting out; 35
  - (ii) the materials costs incurred by the shipbuilder in respect of goods that are actually incorporated in the fitting out of the vessel; and 40
  - (iii) subcontracting costs incurred by the shipbuilder in respect of work carried out by a person other than a registered shipbuilder, being work that is directly connected with the fitting out of the vessel;

(f) where, in the contract for the production of the vessel, provision is made for the trialling of the vessel either in Australia or elsewhere—the costs incurred by the shipbuilder that are referable to the trialling of the vessel, other than the costs of any modification of the vessel arising from the trialling that is not carried out by the shipbuilder in Australia; and

(g) the costs of the transportation of the vessel upon completion of its construction or modification to a place specified in the contract for the production of the vessel for the purpose of delivery.

(2) For the purposes of subsection (1), labour costs incurred by a shipbuilder in relation to employees actually engaged on the production or fitting out of a bountiable vessel that are directly referable to that production or fitting out do not include:

(a) amounts paid by the shipbuilder by way of contribution to a superannuation scheme for the benefit of those employees;

(b) the value of any long service leave to which any of those employees becomes entitled;

(c) workers' compensation payments; or

(d) amounts paid by the shipbuilder by way of payroll tax.

(3) For the purposes of subsection (1), material costs incurred by a shipbuilder in respect of goods that are actually incorporated in the bountiable vessel, in the modification of the bountiable vessel, or in the fitting out of the bountiable vessel, means the full into-store cost to the shipbuilder of goods so used and, without limiting the generality of the foregoing, includes costs incurred by the shipbuilder in respect of materials used in, or component parts of, the bountiable vessel, that are imported from a foreign country, including any freight or insurance costs associated with that importation that are paid by the shipbuilder.

(4) For the purpose of subsection (1), costs incurred by a shipbuilder in transporting a bountiable vessel to or from a place for the purpose of trialling the vessel or for the purpose of carrying out any modification arising from that trialling shall be taken to be costs referable to the trialling of the vessel.

#### **Determination of costs of construction or modification**

6. (1) Where the Comptroller:

(a) is unable to verify the eligible costs 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 eligible costs of the construction or modification of a bountiable vessel:

(i) are incorrect or overestimated;

(ii) should not have been characterised as eligible costs;

(iii) 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;

- (iv) have been fixed in order to obtain an increase in bounty;
- (v) are unduly higher than costs incurred by other shipbuilders in respect of similar vessels; 5
- (vi) have been increased as the result of the influence of a relationship between the shipbuilder and an associate of the shipbuilder; or
- (vii) are higher than would have been the case if the shipbuilder had provided the services that were provided, and charged for, by an associate of the shipbuilder; 10

the Comptroller may, in writing, determine the costs that are, for the purposes of this Act, to be taken to be the eligible costs of the construction or modification of the vessel.

(2) Where the Comptroller is unable to verify the time at which eligible costs were incurred during the construction or modification of the bountiable vessel, the Comptroller may, in writing, determine the time that is, for the purposes of this Act, to be taken to be the time at which those eligible costs were incurred. 15

(3) In making a determination under subsection (1) in relation to a bountiable vessel the Comptroller may disregard any costs charged to, or imposed on, the shipbuilder by an associate of the shipbuilder, being costs that are not actually incurred by the associate, unless the associate charges other persons of whom he or she is not the associate the same amount as the associate charges the shipbuilder of whom he or she is the associate. 20  
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### **Uniformity**

7. 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. 30

## **PART 2—BOUNTY**

### **Specification of bounty**

8. (1) Bounty is payable in accordance with this Act on the production, that is to say, the construction or modification, in Australia, of bountiable vessels. 35

(2) Bounty in respect of the construction or modification of a bountiable vessel is payable to the shipbuilder, or each shipbuilder, who incurs an eligible cost in undertaking, or undertaking a part of, the construction or modification.

(3) A shipbuilder who incurs an eligible cost in undertaking, or undertaking a part of, the construction or modification of a bountiable vessel 40



is not entitled to a payment of bounty in respect of the construction or modification unless:

(a) the construction or modification is completed during the period to which this Act applies;

5 (b) if the construction or modification is commenced after 30 June 1989, the shipbuilder is, at all times during the construction or modification, a registered shipbuilder; and

10 (c) if the construction or modification had commenced before 1 July 1989—the shipbuilder became a registered shipbuilder before the completion of the construction or modification, or before 1 September 1989, whichever first occurs, and continues to be, at all times during that part of the construction or modification taking place after the registration of the shipbuilder, a registered shipbuilder.

15 (4) Where bounty is payable on the construction, or a modification, of a vessel, being a construction or modification commenced before 1 July 1989, this Act shall have effect as if the costs incurred by a shipbuilder before 1 July 1989 in respect of the undertaking of that construction or modification had been incurred by that shipbuilder on 1 July 1989.

20 (5) A registered shipbuilder is not entitled to receive bounty in respect of the modification of a vessel unless the eligible costs incurred in performing the modification by that shipbuilder, or by that shipbuilder and all other registered shipbuilders undertaking parts of the modification, are not less than \$1,000,000.

#### **Certain circumstances in which bounty is not payable**

25 9. (1) Bounty is not payable in respect of the construction or modification of a bountiable vessel that the Comptroller is satisfied was, or will be, upon completion of that construction or modification, and after 1 July 1990, exported, either directly or indirectly through another country or other countries, to New Zealand.

30 (2) Subject to subsection (3), bounty is not payable in respect of a bountiable vessel that is constructed or modified by or for the Commonwealth or a Commonwealth authority.

35 (3) Subsection (2) shall not be taken to apply in any circumstances where the Commonwealth or a Commonwealth authority is the legal owner of a vessel as constructed or modified by reason of the Commonwealth or that authority having entered into an arrangement to provide funds for the construction or modification to a person, other than a Commonwealth authority, who has a beneficial interest in the vessel.

40 (4) Bounty is not payable on the construction of a vessel if bounty has been paid in respect of that construction under the *Ship Construction Bounty Act 1975* or the *Bounty (Ships) Act 1980*.

(5) Bounty is not payable on the modification of a vessel if bounty has been paid in respect of that modification under the *Ship Construction Bounty Act 1975*, the *Bounty (Ships) Act 1980* or the *Bounty (Ship Repair) Act 1986*.

### **Rate of bounty**

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10. Bounty in respect of the construction or modification of a bountiable vessel that is completed before 1 July 1995 is an amount equal to such amount set out below as is, or to the sum of such amounts set out below as are, appropriate:

- (a) in respect of any eligible costs incurred, or taken, by virtue of subsection 8 (4), to have been incurred, between 1 July 1989 and 30 June 1991, inclusive—the product of  $1.2 \times 15\% \times$  the amount of the costs so incurred or taken to have been so incurred; 10
- (b) in respect of any eligible costs incurred between 1 July 1991 and 30 June 1993, inclusive—the product of  $1.2 \times 10\% \times$  the amount of the costs so incurred; 15
- (c) in respect of any eligible costs incurred between 1 July 1993 and 30 June 1995, inclusive—the product of  $1.2 \times 5\% \times$  the amount of the costs so incurred.

## **PART 3—PAYMENT OF BOUNTY**

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### **Claims for payment of bounty**

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

(2) A claim under subsection (1) in respect of the construction or modification of a bountiable vessel shall: 25

- (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 16; and
- (d) be lodged with a Collector for a State or Territory, or with the Comptroller, within 12 months after the construction or modification was completed. 30

(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 21 and 23): 35

- (a) if the Comptroller is satisfied that the claim complies with subsection (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 construction or modification to which the claim relates: 40
  - (i) except where subparagraph (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 \$200; 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) in any other case—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 subsection (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.

**Advances on account of bounty**

12. (1) An advance on account of bounty may be made to a person on such terms and conditions, including terms and conditions relating to the insurance of the vessel, as are approved by the Comptroller in writing.

(2) If a person receives by way of advances on account of bounty in respect of the construction or modification of a vessel an amount greater than the amount of bounty payable to the person in respect of that construction or modification, the person is liable to repay to the Commonwealth the amount of the excess.

(3) If a person receives an amount by way of advances on account of bounty and the bounty does not become payable, the person is liable to repay to the Commonwealth the amount so received.

**Variation of inadequate claim**

13. (1) Where a person who has lodged a claim under section 11 (whether or not the claim has been dealt with under subsection 11 (3)) considers that the claim is or was, because of an inadvertent error, a claim for an amount of bounty in respect of the construction or modification of a bountiable vessel that is or was less than the amount of bounty that the person is or was entitled to claim in respect of that construction or modification, the person may lodge a claim for payment to the person of the difference between the 2 amounts.

(2) A claim under subsection (1) in respect of the construction or modification of a bountiable vessel 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 16; and
- (d) be lodged with a Collector for a State or Territory, or with the Comptroller, within 12 months after the completion of the construction or modification. 5

(3) Where a claim under subsection (1) relates to a claim under section 11 that has not been dealt with under subsection 11 (3), the 2 claims shall be dealt with under subsection 11 (3) as if they were one claim under section 11. 10

(4) As soon as practicable after the lodgment of a claim under subsection (1) to which subsection (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 21 and 23): 15

- (a) if the Comptroller is satisfied that the claim complies with subsection (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 construction or modification to which the claim relates—approve, in writing, payment of the additional amount; or 20
- (b) if the Comptroller is not so satisfied—refuse, in writing, to approve payment of an additional amount of bounty in respect of the construction or modification to which the claim relates.

(5) Where the Comptroller makes a decision under subsection (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. 25

#### **Variation of excessive claim** 30

14. (1) Where a person who has lodged a claim under section 11 (whether or not the claim has been dealt with under subsection 11 (3)) becomes aware that the claim is or was for an amount of bounty in respect of the construction or modification of a bountiable vessel that exceeds the amount of bounty that the person is or was entitled to claim in respect of that construction or modification by more than \$200, the person shall, within 28 days after discovering the excess, lodge an acknowledgment of the excess, being an acknowledgment that complies with subsection (2). 35

Penalty: \$3,000.

- (2) An acknowledgment under subsection (1) shall: 40
  - (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 16; and
- (d) be lodged with a Collector for a State or Territory or with the Comptroller.

5 (3) Where an acknowledgment under subsection (1) relates to a claim under section 11 that has not been dealt with under subsection 11 (3), the claim shall be dealt with under that subsection as if it had been amended in accordance with the acknowledgment.

10 (4) Where the Comptroller, after examining an acknowledgment under subsection (1) that has been dealt with under subsection 11 (3) and causing such inquiries as the Comptroller considers necessary to be made (including inquiries involving the exercise of powers under sections 21 and 23), is satisfied that there has been an overpayment of a claim by more than \$200, 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  
15 that person is liable to repay that amount to the Commonwealth.

**Other adjustments of claims**

20 15. (1) Subject to subsection (2), if the Comptroller becomes satisfied, otherwise than after examining an acknowledgment under subsection 14 (1), that there has been an overpayment of a claim for bounty by more than \$200, 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:

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

(b) the Comptroller is satisfied:

(i) that:

30 (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

35 (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

40 (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 subsection.

(3) Where, in accordance with subsection (2), the Comptroller refrains from causing a demand for repayment of the amount of an overpayment to be served in accordance with subsection (1), particulars of the amount shall be included in the return under section 29 for the year in which the Comptroller so refrained. 5

### **Forms**

16. (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: 10

- (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; 15
- (b) where the person is a body corporate, be:
  - (i) under the seal of the body corporate; or
  - (ii) signed personally in the presence of a witness by a natural person authorised by the body corporate to sign forms under this Act on behalf of the body corporate; and 20
- (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. 25

(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: 30

- (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 35
- (b) where the first-mentioned person is a body corporate—under the seal of the body corporate.

## **PART 4—ADMINISTRATION 40**

### **Registration of persons**

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

(2) An application for registration under this section as a registered shipbuilder 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 in Australia.

5 (3) Subject to subsections (6) and (8), where an application for registration is made under subsection (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 in Australia, the Minister shall:

- 10 (a) register the applicant as a registered shipbuilder by:
- (i) signing a notice, in writing, stating that the applicant is registered as a registered shipbuilder for a period of one year commencing on such day, occurring after 30 June 1989, as is specified in the notice, whether that day occurs before, on, or after, the day of issue of the notice; and
  - 15 (ii) causing the notice to be served on the applicant; or
- (b) refuse to register the applicant as a registered shipbuilder and causing a notice in writing stating that the Minister has refused to register the applicant as a registered shipbuilder to be served on the applicant.

20 (4) A further application may be made under subsection (2) notwithstanding that, at the time of the further application, the applicant is, or has been, registered under this section as a registered shipbuilder but the Minister shall not, in dealing with that further application, specify, in a notice under paragraph (3) (a), a day for the commencement of a registration

25 period that occurs earlier than the day following the end of the most recent period of registration of the person.

(5) The registration of a person in respect of whom the Minister has issued a notice under paragraph (3) (a) shall have effect in accordance with the terms of that notice.

- 30 (6) The Minister shall not register an applicant for registration unless:
- (a) the applicant is a body corporate incorporated under a law of the Commonwealth or of a State or Territory;
  - (b) the applicant lodges, with the application, the documents set out in subsection (7);
  - 35 (c) the applicant demonstrates, to the satisfaction of the Minister, that the applicant has technical and financial management skills necessary to ensure the successful completion of the construction or modification of bountiable vessels;
  - (d) the applicant demonstrates, to the satisfaction of the Minister, that
  - 40 during the period to which the application relates:
    - (i) the applicant will have access to such facilities, including a waterfront site, as are necessary for undertaking the construction or modification of bountiable vessels;

- (ii) at least 75% of the applicant's activities will be devoted to the construction or modification of vessels of more than 150 but not more than 10,000 gross construction tons; and
  - (iii) the applicant will at all times have in its employment at least 40 persons involved in the business of constructing or modifying vessels referred to in subparagraph (ii) and at least one apprentice for every 8 tradespersons included within the 40 persons who are so involved; and 5
  - (e) the applicant complies with any other condition of registration that is specified in the regulations for the purpose of this paragraph. 10
- (7) For the purposes of subsection (6), an applicant for registration shall lodge with the application:
- (a) an independent auditor's report verifying the applicant's capacity:
    - (i) to fund the construction or modification of bountiable vessels; and 15
    - (ii) to meet all financial liabilities likely to be incurred by the applicant in connection with the construction or modification of bountiable vessels or with performance guarantees given in relation to bountiable vessels;
  - (b) a business plan that outlines: 20
    - (i) the applicant's current position in the world market for the construction or modification for bountiable vessels including a statement of the applicant's position in that market with respect to products and technology;
    - (ii) the applicant's business objectives over a period (in this subsection called the "planning period") commencing at the start of the period to which the application relates and ending on the expiration of 5 years or of the period to which the Act applies, whichever first occurs, and the applicant's strategies for achieving those objectives; 25
    - (iii) the applicant's anticipated employment, investment and production levels during the planning period; 30
    - (iv) the applicant's plans for using bounty funds that are paid to the applicant; and
    - (v) the applicant's perception of how the phase-down in the rate of bounty will affect the applicant's business; and 35
  - (c) a statement estimating the amount of bounty to which the applicant believes the applicant will become entitled during the financial year in which the application is made and of the amounts of bounty to which the applicant is likely to become entitled during each subsequent financial year within the period to which the Act applies. 40
- (8) 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 unless the information is given to the satisfaction of the Minister.

(9) Where, at any time during a period of registration of a person as a registered shipbuilder, the Minister becomes satisfied that the person:

- 5 (a) no longer carries out the construction or modification of bountiable vessels in Australia;
- (b) has ceased to be a body corporate referred to in paragraph (6) (a);
- (c) no longer has the skills referred to in paragraph (6) (c);
- 10 (d) no longer meets a requirement referred to in subparagraph (6) (d) (i), (ii) or (iii); or
- (e) has ceased to comply with any other condition of registration or of renewal of registration specified in accordance with paragraph (6) (e);

15 the Minister may cancel the registration of the person as a registered shipbuilder by causing a notice, in writing, stating that the registration of the person as a shipbuilder is cancelled with effect from a day specified in the notice, not being a day earlier than the day of issue of the notice, to be served on the person.

#### Accounts

- 20 18. (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:
    - 25 (i) such particulars relating to the construction or modification of bountiable vessels 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 construction or modification of bountiable vessels as are specified by the Comptroller by notice in writing served on the person; and
  - 30 (b) the person retains those accounts, books, documents and other records for at least 3 years after the day on which a claim under subsection 11 (1) for bounty was made in respect of the construction or modification of the bountiable vessel concerned.

35 (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

40 19. 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**

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**20. (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;

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

**(2)** In subsection (1):

“officer” means an Officer of Customs within the meaning of the *Customs Act 1901*.

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#### **Entry on premises occupied by registered shipbuilder**

**21. (1)** For the purpose of this Act, an authorised officer may, at all reasonable times, enter premises occupied by a registered shipbuilder, other than residential premises, and may, upon so entering:

- (a) inspect any bountiable vessel in respect of which a relevant activity has been, is being, or is intended to be, carried out;
- (b) inspect any step in the carrying out of a relevant activity in respect of a bountiable vessel; and
- (c) inspect the accounts, books, documents and other records relating to a relevant activity in respect of a bountiable vessel, and may make and retain copies of, or take extracts from, any such accounts, books, documents or other records.

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**(2)** The occupier or person in charge of premises that may be entered under subsection (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.

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Penalty: \$3,000.

#### **Entry on other premises**

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

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

- (a) premises where there is a bountiable vessel in respect of which a relevant activity has been, is being, or is intended to be, carried out;

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(b) premises on which any step in the carrying out of a relevant activity in respect of a bountiable vessel is taking, or is intended to take, place; or

5 (c) premises where there are kept any accounts, books, documents or other records relating to a relevant activity in respect of a bountiable vessel;

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

(3) If, on an application under subsection (2), the Magistrate is satisfied, by information on oath or affirmation, that:

15 (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 subsection 21 (1); and

20 (c) the occupier of the premises has not given consent for the authorised officer to enter the premises and exercise the powers of an authorised officer under this section in relation to those premises;

25 the Magistrate 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 powers of an authorised officer under this section in relation to those premises.

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

30 (a) to inspect any bountiable vessel in respect of which a relevant activity has been, is being, or is intended to be, carried out;

(b) to inspect any step in the carrying out of a relevant activity in respect of a bountiable vessel; and

35 (c) to inspect accounts, books, documents and other records relating to a relevant activity in respect of a bountiable vessel;

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

**Power to require persons to answer questions and produce documents**

40 23. (1) 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 a relevant activity in respect of a bountiable vessel, 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 activity as are referred to in the notice.

(2) A notice under subsection (1) requiring a person to produce an account, book, document or record shall set out the effect of subsection (3).

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

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

Penalty: \$3,000 or imprisonment for 6 months, or both.

(4) An authorised officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced under 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, subsection (3) or paragraph 25 (3) (a).

(6) Where a director, servant or agent of a registered shipbuilder 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 shipbuilder, unless the Comptroller otherwise directs in writing, until that person has attended, answered the question or produced the account, book, document or other record, as the case may be.

#### **Power to examine on oath etc.**

24. (1) An authorised officer may examine, on oath or affirmation, a person attending in accordance with a requirement under section 23 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 subsection (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**

- 5       **25. (1)** A person shall not, without reasonable excuse, refuse or fail:
- (a) to attend before 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;

10      when so required under this Act.

Penalty: \$3,000 or imprisonment for 6 months, or both.

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

Penalty: \$30,000 or imprisonment for 5 years, or both.

15      **(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

20      (b) knowingly or recklessly present (otherwise than in accordance with a requirement under subsection 23(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.

25      Penalty: \$3,000 or imprisonment for 6 months, or both.

(4) Where, in proceedings for an offence against subsection (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

35      (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;

40      shall be deemed, for the purposes of subsections (2) and (3), to have been engaged in by the body.

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

(7) A person shall not be convicted of: 5

(a) both an offence against or arising out of subsection (2) and an offence against or arising out of subsection 14(1); or

(b) both an offence against or arising out of subsection (2) and an offence against or arising out of subsection (3);

in respect of the same claim for bounty. 10

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

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

(10) Notwithstanding that an offence against subsection (2) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent. 15

(11) Where, in accordance with subsection (10), a court of summary jurisdiction convicts a person of an offence against subsection (2), the penalty that the court may impose is a fine not exceeding \$6,000 or imprisonment for a period not exceeding 12 months, or both. 20

### **Time for prosecutions**

26. 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. 25

### **Recovery of bounty on conviction**

27. (1) Where a person is convicted of an offence against subsection 14 (1) or 25 (2) or (3), the court may, in addition to imposing a penalty under that subsection, 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. 30

(2) Where:

(a) a court makes an order under subsection (1) ordering a person to refund to the Commonwealth the amount of any bounty; and 35

(b) the court has civil jurisdiction to the extent of the amount;

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

(3) Where:

(a) a court makes an order under subsection (1) ordering a person to refund to the Commonwealth the amount of any bounty; and 40

(b) the court:

(i) does not have civil jurisdiction; or

(ii) has civil jurisdiction otherwise than to the extent of the amount;

5 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.

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

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

### **Recovery of repayments**

20 **28. (1)** Where a person is liable to repay an amount to the Commonwealth under subsection 14 (4) or 15 (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 subsection 14 (4) or 15 (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 5—MISCELLANEOUS**

### **Return for Parliament**

30 **29. (1)** The Comptroller shall, as soon as practicable after the end of the financial year commencing on 1 July 1989 and of each subsequent 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;

35 (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**

30. (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. 5

(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. 10

**Application for review**

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

- (a) a decision of the Comptroller under paragraph 11 (3) (a) approving payment of bounty; 15
- (b) a decision of the Comptroller under paragraph 11 (3) (b) refusing to approve payment of bounty;
- (c) a decision of the Comptroller under paragraph 13 (4) (a) approving a payment;
- (d) a decision of the Comptroller under paragraph 13 (4) (b) refusing to approve a payment; 20
- (e) a decision of the Comptroller for the purposes of subsection 14 (4);
- (f) a decision of the Comptroller for the purposes of subsection 15 (1);
- (g) a decision of the Minister under subsection 17 (3);
- (h) a decision of the Minister under subsection 17 (9) to cancel the registration of a person as a registered shipbuilder; or 25
- (j) a requirement by the Comptroller under section 19.

(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) (b), (d), (e) or (f), in respect of a construction or modification, the Tribunal, if it considers it appropriate to do so, may: 30

- (a) if a determination under section 6 in respect of the amount of eligible costs or the time that they were incurred has been made in respect of that construction or modification, either:
  - (i) set aside that determination; or 35
  - (ii) set aside that determination and make a further determination under that section in respect of the construction or modification to which the determination so set aside applied; or
- (b) if a determination under that section has not been made in respect of the construction or modification to which the decision applies, make a determination under that section in respect of the construction or modification to which the decision applies. 40



(3) In this section:

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**Statement to accompany notice of decisions**

5           32. (1) Where the Minister or Comptroller makes a determination,  
decision or requirement of a kind referred to in subsection 31 (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,  
10           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.

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

**Appropriation**

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

**Regulations**

25           34. 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.











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