

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

FERTILISERS SUBSIDY BILL 1986

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1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 12 November 1986)

(THE MINISTER FOR INDUSTRY, TECHNOLOGY AND COMMERCE,
SENATOR BUTTON)

A BILL

FOR

An Act relating to the payment of subsidy in respect of certain fertilisers

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 *Fertilisers Subsidy Act 1986*.

Commencement

2. This Act shall be deemed to have come into operation on 20 August
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—

“accounting period”, in relation to a producer of subsidised goods, has the meaning given by section 7;

“advance” means an advance on account of subsidy under section 16; 5

“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 25;

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

“Comptroller” means the Comptroller-General of Customs; 10

“nitrogenous fertiliser mixture” means a mixture resulting from the addition to a subsidised nitrogenous substance of other goods, being a mixture for use as a fertiliser;

“phosphate fertiliser mixture” means a mixture resulting from the addition to a subsidised phosphatic substance of fertilisers that are not subsidised phosphatic substances; 15

“producer” means a producer of subsidised goods;

“registered premises” means premises registered by the Comptroller under section 22;

“subsidised goods” means— 20

(a) subsidised nitrogenous substances; or

(b) subsidised phosphatic substances;

“subsidised nitrogenous substance” means a manufactured substance that is a chemical compound composed in part of nitrogen, not being a substance manufactured in whole or in part by a biological process or manufactured in whole or in part from a substance that has come into existence by a biological process; 25

“subsidised phosphatic substance” means a substance that is a chemical compound composed in part of phosphorus;

“subsidy” means subsidy under this Act; 30

“subsidy period” means the period commencing on 20 August 1986 and ending on 30 June 1989.

(2) For the purposes of this Act, use as a supplement to stock food shall be regarded as use as a fertiliser.

Trace elements, &c. 35

5. (1) The regulations may specify—

(a) a trace element;

(b) a compound of a trace element; or

(c) a substance that contains not less than a specified proportion of a trace element or of a compound of a trace element, 40

to be a trace element, a compound or a substance in relation to which this section applies.

(2) Where a trace element, a compound or a substance in relation to which this section applies has been added to a subsidised nitrogenous substance in respect of which subsidy is claimed, the trace element, compound or substance so added shall be deemed to be that subsidised nitrogenous substance and to have the same nitrogen content as that nitrogenous substance, and subsidy is payable accordingly.

(3) Where a trace element, a compound or a substance in relation to which this section applies has been added to a subsidised phosphatic substance in respect of which subsidy is claimed, the trace element, compound or substance so added shall be deemed to be that subsidised phosphatic substance and to have the same available phosphorus content as that phosphatic substance, and subsidy is payable accordingly.

Analysis, &c.

6. Where it is necessary to ascertain, for the purposes of this Act, the constitution or characteristics of a substance or a mixture (including the nitrogen content, or the available phosphorus content, of the substance or mixture), the constitution or characteristics shall be ascertained on the basis of samples of the substance or mixture taken, and analysed, in accordance with procedures determined by the Comptroller.

Accounting period

7. A reference in this Act to an accounting period of a producer of subsidised goods shall be construed as a reference to—

- (a) where the producer has an accounting period in relation to those goods of 12 months commencing on a day other than 1 July—that accounting period; or
- (b) in any other case—a financial year.

Uniformity

8. 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 any subsidy that is a bounty within the meaning of paragraph 51 (iii) of the Constitution would not be uniform throughout the Commonwealth within the meaning of that paragraph.

PART II—SUBSIDY

Specification of subsidy

9. (1) Subsidy is payable in accordance with this Act on the production in Australia of subsidised goods.

(2) The subsidy in respect of subsidised goods is payable to the producer of the goods.

(3) A producer of subsidised goods is not entitled to receive a payment of subsidy in respect of the goods unless—

- (a) the goods were produced at registered premises; and
- (b) during the subsidy period, the goods were—
 - (i) sold by the producer for use in Australia as a fertiliser;
 - (ii) in the case of a subsidised nitrogenous substance—
 - (A) used by the producer in the production of a nitrogenous fertiliser mixture; or 5
 - (B) sold by the producer to another person for use by the other person in producing a nitrogenous fertiliser mixture; or
 - (iii) in the case of a subsidised phosphatic substance— 10
 - (A) used by the producer in the production of a phosphatic fertiliser mixture; or
 - (B) sold by the producer to another person for use by the other person in producing a phosphatic fertiliser mixture. 15

Benefit of subsidy to be passed on to purchaser

10. Where the Comptroller is not satisfied that the prices being charged by a producer to purchasers in respect of the sale of subsidised goods, being subsidised goods in respect of which subsidy is payable, are such as to pass on to the purchasers the full benefit of that subsidy, the Comptroller may direct that subsidy shall not be paid to that producer. 20

Rate of subsidy—subsidised nitrogenous substances

11. Subsidy in respect of any subsidised nitrogenous substances is payable at the rate of \$20 for each tonne of the nitrogen content of the substance.

Rate of subsidy—subsidised phosphatic substances 25

12. Subsidy in respect of any subsidised phosphatic substance is payable at the rate of—

- (a) where the percentage of the available phosphorus content of the substance is less than 10%—\$153 for each tonne of the available phosphorus content of the substance; 30
- (b) where the percentage of the available phosphorus content of the substance is 10%, or more than 10% but less than 15%—\$163 for each tonne of the available phosphorus content of the substance; or
- (c) in any other case—\$188 for each tonne of the available phosphorus content of the substance. 35

Subsidy may be paid to person authorised by the producer

13. Subsidy payable to a person may, subject to such conditions and restrictions, if any, as are prescribed, be paid to another person authorised by the first-mentioned person to receive the subsidy.

Avoidance of double subsidy

14. Where subsidy becomes payable in respect of any goods under this Act, subsidy is not payable under this Act in respect of goods made in whole or in part from those goods.

5 Good quality of subsidised goods

15. (1) Subsidy is not payable on the production of goods if the Comptroller declares in writing that, in his or her opinion, the goods are not of good and merchantable quality.

10 (2) Where the Comptroller makes a declaration under sub-section (1) in respect of goods in relation to which subsidy has been paid to a person, the person is liable to repay to the Commonwealth an amount equal to the amount of that subsidy.

PART III—PAYMENT OF SUBSIDY**Advances on account of subsidy**

15 16. (1) An advance on account of subsidy may be made to a person on such terms and conditions as are approved by the Comptroller in writing.

20 (2) If a person receives, by way of advances on account of subsidy in respect of particular subsidised goods, an amount that exceeds the amount of subsidy payable to the person in respect of those goods, 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 subsidy that may become payable to the person and the subsidy does not become payable to the person, the person is liable to repay to the Commonwealth the amount so received.

25 (4) If, at the expiration of an accounting period of a producer of subsidised goods, the producer has received, by way of advances on account of subsidy that may become payable to the producer during that period in respect of subsidised goods, an amount that exceeds the sum of—

30 (a) the amount of subsidy that became payable to the producer during that period in respect of subsidised goods; and

(b) the amount or amounts (if any) paid to the producer during that period in respect of subsidised goods that the producer is liable to repay to the Commonwealth by virtue of sub-section (2) or (3),

35 the producer is liable to repay to the Commonwealth the amount of the excess.

Claims for payment of subsidy

17. (1) Subject to sub-section (2), a person who claims to be entitled to be paid an amount of subsidy in respect of subsidised goods may lodge a claim for payment to the person of the amount.

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

(3) A claim under sub-section (1) in respect of subsidised goods 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; 5
- (c) be signed and witnessed as required by section 21; and
- (d) be lodged with a Collector for a State, or with the Comptroller, within 12 months after the day on which the last condition for the payment of subsidy in respect of those goods became satisfied. 10

(4) 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 26 and 28)—

- (a) if the Comptroller is satisfied that the claim complies with sub-section (3) and that the claimant is, or, if certain estimates are correct, is, otherwise entitled to be paid an amount of subsidy in respect of the subsidised goods to which the claim relates— 15

- (i) except where sub-paragraph (ii) applies—approve, in writing, payment of the amount; or 20

- (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 25

- (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 subsidy,

- approve, in writing, payment of the amount claimed; or 30

- (b) if the Comptroller is not so satisfied—refuse, in writing, to approve payment of subsidy in respect of the goods 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 subsidy, not being a decision approving payment of the amount of subsidy 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. 35

Variation of inadequate claim

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18. (1) Where a person who has lodged a claim under section 17 (whether or not the claim has been dealt with under sub-section 17 (4)) considers that the claim was, because of an inadvertent error, a claim for

an amount of subsidy in respect of subsidised goods that was less than the amount of subsidy that the person was entitled to claim in respect of those goods, the person may lodge a claim for payment to the person of the difference between the 2 amounts.

- 5 (2) A claim under sub-section (1) in respect of subsidised goods 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 21; and
10 (d) be lodged with a Collector for a State, or with the Comptroller,
 within 12 months after the day on which the last condition for the
 payment of subsidy in respect of those goods became satisfied.
- (3) Where a claim under sub-section (1) relates to a claim under section
17 that has not been dealt with under sub-section 17 (4), the 2 claims shall
15 be dealt with under sub-section 17 (4) as if they were one claim under
section 17.
- (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
20 considers necessary to be made (including inquiries involving the exercise of
powers under sections 26 and 28)—
- (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
25 subsidy in respect of subsidised goods 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 subsidy in respect of the goods
to which the claim relates.
- 30 (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 subsidy, 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
35 lodged the claim a notice in writing setting out the decision.

Variation of excessive claim

- 40 19. (1) Where a person who has lodged a claim under section 17
(whether or not the claim has been dealt with under sub-section 17 (4))
becomes aware that the claim is for an amount of subsidy in respect of
subsidised goods that exceeds the amount of subsidy that the person was
entitled to claim in respect of those goods 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 subsidised goods 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 21; and
- (d) be lodged with a Collector for a State or with the Comptroller.

(3) Where an acknowledgment relates to a claim under section 17 that has not been dealt with under sub-section 17 (4), 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 26 and 28), 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

20. (1) Subject to sub-section (2), if the Comptroller becomes satisfied, otherwise than after examining an acknowledgment under sub-section 19 (1), that there has been an overpayment of a claim for subsidy 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 subsidy, 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 34 for the year in which the Comptroller so refrained.

Forms

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

(a) where the person is a natural person, be signed personally in the presence of a witness by—

(i) the person; or

(ii) another natural person authorised by the first-mentioned person to sign forms under this Act on behalf of the first-mentioned person;

(b) where the person is a body corporate, be—

(i) under the seal of the first-mentioned person; or

(ii) signed personally in the presence of a witness by a natural person authorised by the first-mentioned person to sign forms under this Act on behalf of the first-mentioned person; and

(c) where the form is required to be signed by a natural person in the presence of a witness, state the name and address of the witness and contain a declaration signed by the witness stating that the form was signed in the presence of the witness.

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

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PART IV—ADMINISTRATION

Registration of premises

22. (1) Subject to this section, premises that are used solely or principally for industrial or commercial purposes may be registered under this section for the purposes of this Act.

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(2) An application for the registration of premises under this section may be made to the Comptroller, in accordance with the appropriate approved form, by a person who carries out, or proposes to carry out, at the premises, the production of subsidised goods.

(3) Subject to sub-sections (6), (8), (10) and (12), where an application for the registration of premises is made under sub-section (2) by a person who, in the opinion of the Comptroller, carries out, or proposes to carry out, the production of subsidised goods at the premises, the Comptroller shall—

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(a) register the premises in the name of the person by—

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- (i) signing a notice, in writing, specifying the day on which it was signed and stating that the premises have been registered under this section; and

- (ii) causing the notice to be served on the person; or

(b) refuse to register the premises and cause a notice, in writing, stating that the Comptroller has refused to register the premises to be served on the person.

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

- (a) the day on which the notice under paragraph (3) (a) in relation to the premises is signed; or

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- (b) such earlier day, not being a day earlier than 20 August 1986, as is specified for the purpose in the notice.

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

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- (a) all subsidised goods;

- (b) subsidised nitrogenous substances; or

- (c) subsidised phosphatic substances,

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

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(6) The Comptroller shall not register premises under this section in the name of a person unless that person has given an undertaking in writing to the Commonwealth to the effect that—

5 (a) any subsidised goods produced by the person at the premises after the registration of the premises that are sold will be sold at a price that gives to the purchaser the benefit of any payment of subsidy received or to be received by the person in respect of the goods; and

10 (b) the person will not make a claim for payment of subsidy in respect of any subsidised goods produced by the person at the premises after the registration of the premises that were sold unless the person sold the goods at a price that gave to the purchaser the benefit of the payment of subsidy that the person claims.

15 (7) The regulations may prescribe conditions to be met by an applicant for the registration of premises under this section including, without limiting the generality of the foregoing, a condition requiring an applicant to be a person included in a specified class of persons.

20 (8) If conditions have been prescribed for the purposes of sub-section (7), the Comptroller shall not register premises under this section in the name of a person unless—

(a) the Comptroller is satisfied that the conditions are, or will be, met by the person; or

(b) registration of premises for those purposes in the name of the person is otherwise permitted under the regulations.

25 (9) The regulations may prescribe conditions to be complied with in connection with the production of subsidised goods or subsidised goods of a particular kind at premises registered under this section.

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

30 (a) the Comptroller is satisfied that the conditions have been, or will be, complied with in relation to the premises; or

(b) registration of the premises for those purposes is otherwise permitted under the regulations.

35 (11) The Comptroller may require an applicant for the registration of premises under this section to give such information as the Comptroller considers necessary for the purposes of this Act and may refuse to register the premises until the information is given to the satisfaction of the Comptroller.

40 (12) Where an applicant for the registration of premises under this section was not, on 19 August 1986, engaged at the premises in the production of subsidised goods, the Comptroller shall not register those premises if the Minister has informed the Comptroller that the registration of those premises will not permit the orderly development in Australia of the industry comprising the production of subsidised goods.

(13) Subject to sub-section (14), where—

- (a) premises are registered under this section; and
- (b) the person in whose name the premises are registered and the person (in this sub-section and sub-section (14) referred to as the “transferee”) who carries out, or proposes to carry out, at the premises the production of subsidised goods, make a joint application, in writing, to the Comptroller for the transfer of the registration of the premises to the name of the transferee, 5

the Comptroller shall transfer the registration of the premises to the name of the transferee by causing a notice, in writing, stating that the registration has been so transferred to be served on the transferee. 10

(14) The Comptroller shall not transfer the registration of the premises to the name of the transferee unless the Comptroller is satisfied that, if the transferee were an applicant for the registration of the premises under this section, the Comptroller would be authorised to register the premises for those purposes in the name of the transferee. 15

(15) A transfer under sub-section (13) of the registration of premises has effect from and including such day as is specified in the notice under that sub-section in relation to the transfer, being a day not earlier than—

- (a) 20 August 1986; or 20
- (b) the day 6 months before the day on which the application for the transfer was made.

(16) Where, at any time, the Comptroller becomes satisfied, in respect of premises registered under this section—

- (a) that subsidised goods are not being produced at those premises; 25
- (b) in a case where the premises are registered in relation to a class of subsidised goods referred to in paragraph (5) (b) or (c)—subsidised goods included in that class are not being produced at those premises;
- (c) that the production at those premises of subsidised goods is being carried out by a person other than— 30
 - (i) the person in whose name the premises are registered; or
 - (ii) a person who is entitled to make an application under sub-section (13) in relation to the premises;
- (d) the person in whose name the premises are registered has not complied with the undertaking referred to in sub-section (6); or 35
- (e) in a case where conditions have been prescribed for the purposes of sub-section (7) or (9)—that, if the person in whose name the premises are registered was, at that time, an applicant for the registration of the premises under this section, the Comptroller would not be authorised to register the premises under this section 40
 - in the name of the person,

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

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

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

Accounts

10 23. (1) A person is not entitled to subsidy unless—

- (a) the person keeps, in writing in the English language, such accounts, books, documents and other records as correctly record and explain—
 - 15 (i) such particulars relating to the production (including the cost of production) of subsidised goods in respect of which subsidy 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 those goods as are specified by the Comptroller by notice in writing served on the person; and

20 (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 17 (1) for subsidy was made in respect of the goods concerned.

25 (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

30 24. The Comptroller may, by notice in writing served on a person to whom subsidy 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 subsidy, or an advance on account of subsidy, unless the person gives security in accordance with the requirement.

Appointment of authorised officers

40 25. (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*.

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

26. (1) For the purposes of this Act, an authorised officer may, at all reasonable times, enter registered premises and may—

- (a) inspect, or take stock of, any subsidised goods;
- (b) inspect any process in the production of any subsidised goods; and
- (c) inspect the accounts, books, documents and other records relating to the production or storage of subsidised goods,

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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 registered premises 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:

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

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Entry on unregistered premises

27. (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, not being registered premises, are—

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- (a) premises where there are stored subsidised goods in respect of which subsidy has been claimed or is likely to be claimed;
- (b) premises on which any process in the production of any subsidised goods is taking, or will take, place; or
- (c) premises where there are kept any accounts, books, documents or other records relating to the production or storage of subsidised goods,

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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.

35

(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);

40

- (b) those premises are not registered premises; 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,

5 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
10 section in relation to those premises.

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

- (a) to inspect, or take stock of, any subsidised goods;
- (b) to inspect any process in the production of any subsidised goods;
15 and
- (c) to inspect accounts, books, documents and other records relating to the production or storage of subsidised goods,

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

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

28. (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 production of subsidised goods, to attend before him or her
25 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 production of subsidised goods 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
30 (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,
35 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
40 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 5
- (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. 10

(5) A person is not excused from answering a question or producing any accounts, books, document or other records when required so to do under this section on the ground that the answer to the question, or the production, might tend to incriminate the person or make the person liable to a penalty, but the answer of the person to any such question, or the production by the person of any such account, book, document or other record, 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 30 (3) (a). 15 20

(6) Where a producer of subsidised goods, or a person employed by a producer of subsidised goods, 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, subsidy is not payable to the producer, unless the Comptroller otherwise directs in writing, until the producer 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. 25

Power to examine on oath, &c.

29. (1) A Collector or an authorised officer may examine, on oath or affirmation, a person attending before him or her pursuant to section 28 and, for that purpose, may administer an oath or affirmation to the person. 30

(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. 35

Offences

30. (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, 40

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.

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

Penalty:

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

(3) A person shall not—

- (a) make to an authorised officer or other person exercising a power or performing a function or duty in relation to this Act a statement, either orally or in writing, that is to the knowledge of the person false or misleading in a material particular; or
- 15 (b) present (otherwise than pursuant to sub-section 28 (1)) to an authorised officer or other person exercising a power or performing a function or duty in relation to this Act an account, book, document or other record that is to the knowledge of the person false or
- 20 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.

25 (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

30 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 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 19 (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.

(12) In this section, "subsidy" includes an advance.

Time for prosecutions

31. 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 subsidy on conviction

32. (1) Where a person is convicted of an offence against sub-section 19 (1) or 30 (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 subsidy 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 subsidy; 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 subsidy; and

(b) the court—

5 (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.

10 (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.

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

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

(7) In this section, “subsidy” includes an advance.

20 **Recovery of repayments**

33. (1) Where a person is liable to repay an amount to the Commonwealth under sub-section 15 (2), 16 (2), (3) or (4), 19 (4) or 20 (1), the Commonwealth may recover that amount as a debt due to the Commonwealth by action in a court of competent jurisdiction.

25 (2) Where a person is liable to repay an amount to the Commonwealth under sub-section 15 (2), 16 (2), (3) or (4), 19 (4) or 20 (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
30 in full to the person.

PART V—MISCELLANEOUS

Return for Parliament

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

35 (a) the name and address of each person to whom subsidy was paid in that financial year;

(b) the amount of subsidy 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.

(3) In this section, "subsidy" includes an advance.

Delegation

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35. (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.

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(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

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

- (a) a determination of the Comptroller for the purposes of section 6;
- (b) a direction by the Comptroller under section 10;
- (c) a declaration by the Comptroller for the purposes of sub-section 15 (1);
- (d) a decision of the Comptroller under paragraph 17 (4) (a) approving payment of subsidy;
- (e) a decision of the Comptroller under paragraph 17 (4) (b) refusing to approve payment of subsidy;
- (f) a decision of the Comptroller under paragraph 18 (4) (a) approving a payment;
- (g) a decision of the Comptroller under paragraph 18 (4) (b) refusing to approve a payment;
- (h) a decision of the Comptroller for the purposes of sub-section 19 (4);
- (j) a decision of the Comptroller for the purposes of sub-section 20 (1);
- (k) a decision of the Comptroller under section 22 refusing to register premises (other than such a decision made under sub-section 22 (12));
- (m) a decision of the Comptroller for the purposes of sub-section 22 (4);
- (n) a decision of the Comptroller under section 22 transferring, or refusing to transfer, the registration of premises;
- (p) a decision of the Comptroller under sub-section 22 (16) cancelling the registration of premises; or
- (q) a requirement by the Comptroller under section 24.

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

Statement to accompany notice of decisions

5 37. (1) Where the Comptroller makes a determination, decision or requirement of a kind referred to in sub-section 36 (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
10 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 sub-section (1) in relation to a determination, decision or requirement does not affect the validity of the determination, decision or requirement.

Appropriation

38. Payments of subsidy, and advances on account of subsidy, shall be made out of money appropriated by the Parliament for the purpose.

20 Regulations

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

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

PART VI—AMENDMENT OF THE NITROGENOUS FERTILIZERS SUBSIDY ACT 1966

Principal Act

30 40. The *Nitrogenous Fertilizers Subsidy Act 1966*¹ is in this Part referred to as the Principal Act.

Interpretation

41. Section 3 of the Principal Act is amended by omitting from sub-section (2) "30 June 1989" and substituting "19 August 1986".

Application

35 42. Notwithstanding the amendment made by section 41, the Principal Act as in force immediately before the commencement of this Act continues to apply in respect of goods produced, or exported to Australia, before 20 August 1986.

Applications for subsidy

43. Notwithstanding any provision of the Principal Act, subsidy under that Act is not payable unless application for the subsidy is made before 20 August 1987.

PART VII—AMENDMENT OF THE PHOSPHATE FERTILIZERS SUBSIDY ACT 1963

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Principal Act

44. The *Phosphate Fertilizers Subsidy Act 1963*² is in this Part referred to as the Principal Act.

Interpretation

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45. Section 3 of the Principal Act is amended by omitting “30 June 1989” from the definition of “subsidy period” in sub-section (1) and substituting “19 August 1986”.

Application

46. Notwithstanding the amendment made by section 45 the Principal Act as in force immediately before the commencement of this Act continues to apply in respect of goods produced, or exported to Australia, before 20 August 1986.

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Applications for subsidy

47. Notwithstanding any provision of the Principal Act, subsidy under that Act is not payable unless application for the subsidy is made before 20 August 1987.

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NOTES

1. No. 78, 1966, as amended. For previous amendments, see No. 79, 1969; No. 107, 1972; No. 216, 1973 (as amended by No. 20, 1974); No. 78, 1974; Nos. 20 and 152, 1976; No. 114, 1977; No. 112, 1978; No. 109, 1979; No. 137, 1980; No. 174, 1981; Nos. 26 and 69, 1982; No. 91, 1983; Nos. 39 and 74, 1985; and Nos. 10 and 87, 1986.
2. No. 78, 1963, as amended. For previous amendments, see No. 40, 1966; No. 86, 1968; No. 66, 1969; No. 86, 1971; No. 19, 1976; No. 66, 1977; Nos. 26 and 69, 1982; Nos. 39 and 74, 1985; and Nos. 10 and 87, 1986.