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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BOUNTY (COMPUTERS) AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Industry,
Technology and Commerce, Senator the Honourable John N. Button)

BOUNTY (COMPUTERS) AMENDMENT BILL 1992

OUTLINE

This Bill proposes a number of amendments to the Bounty (Computers) Act 1984 which are designed primarily to tighten the definitions, and therefore bounty eligibility, of two bountiable factory costs, as well as strengthen the ability of the Australian Customs Service to substantiate claims made under the scheme.

The amendments in particular:

- i) introduce a definition of "research and development", to clarify which factory costs are to be included under this phrase, and to expressly require that the object of any such research and development must be the manufacture of bountiable equipment within the bounty period, (i.e. by 31 December 1995) (Clause 4, new section 3A and Clause 5 refer);
- ii) introduce a modified definition of "operating software" to expressly exclude previously eligible software for Local Area Network (LAN) systems and microprocessor-based equipment. (Clause 3 refers);
- iii) remake the existing record-keeping obligation in section 21 of the Act to assist with the substantiation of the various elements which are included in a claim for bounty, including the introduction of a pecuniary penalty for the failure to keep such records (Clause 10 refers); and
- iv) propose an administrative reform to the scheme by removing the requirement that a claim for bounty be lodged with Customs in the State or Territory of manufacture, which will allow interstate manufacturing operations to lodge consolidated claims (Clauses 6, 7, 8 and 9 refer).

Financial Impact Statement

The measures contained in this Bill which tighten the eligible bountiable costs definitions, and which strengthen the ability of the administrators of the scheme to substantiate claims made under it, are expected to result in Budget savings in 1991-92 dollars as follows:

\$4.0m in financial year 1992-93 (commencing 1 Jan. 1993),
\$8.0m in financial year 1993-94,
\$9.0m in financial year 1994-95, and
\$5.0m in financial year 1995-96 (ending on 31 Dec. 1995).

BOUNTY (COMPUTERS) AMENDMENT BILL 1992NOTES ON CLAUSESShort title etc.

Clause 1 is a machinery Clause which provides for the Act to be cited as the Bounty (Computers) Amendment Act 1992 (subclause (1)) and identifies the Bounty (Computers) Act 1984 as the Principal Act being amended by this Act (subclause (2)).

Commencement

Clause 2 provides for the Act to commence on the day on which it receives the Royal Assent.

Interpretation

Clause 3 amends the interpretation provision of the Principal Act (section 3) as follows:

Paragraph (a) amends the existing definition of "manufacturer" in subsection 3(1) of the Principal Act by omitting subparagraph (a)(ii) which referred to "engaging in systems engineering or systems design".

Systems engineering and design are now covered by the new definition for "research and development" (Clause 4, new subparagraph 3A(1)(a)(iii) refers), making paragraph (a)(ii) of this definition redundant.

Paragraph (b) omits the previous definition of "operating software" in subsection 3(1) of the Principal Act, which referred to Australian Standard 1189 of the Standards Association of Australia as in force from time to time, and substitutes a new definition which specifically relates to the software on Automatic Data Processing (ADP) equipment and excludes software for Local Area Network (LAN) systems and microprocessor-based equipment.

Specifically, the proposed definition narrows the range of previously eligible operating software by now defining such software as the software which allows the processor to communicate with the storage, input and output devices and which allows the application software to be run (paragraph (a) of the definition refers).

In relation to ADP equipment which is part of a LAN system, it is that software which allows the processor of an individual LAN machine to communicate with the storage, input and output devices and allows the application software to be run, but it does not include that software which allows the processor of one machine within the LAN system to communicate with another in that system (paragraph (b) of the definition refers).

Paragraph (c) inserts a definition for "application software" into subsection 3(1) of the Principal Act which defines it as that software which allows the computer or system to perform an operation required by a particular user.

Insertion of a new section

Clause 4 inserts a new section 3A into the Principal Act which defines "research and development" (R&D) for the purposes of the Act. Expenditure on research and development can be included as part of the eligible factory costs of a claim for bounty under the Act (Clause 5 new subsection 6(2) refers). This new definition is intended to clarify and limit the expenditure on R&D which can be legitimately claimed under this bounty scheme and is modelled along the lines of the definition appearing in section 73B of the Income Tax Assessment Act 1936.

New subsection 3A(1) requires that to qualify as research and development an activity:

- . must be a "systematic investigative or experimental" activity which is carried out in Australia in registered premises or on behalf of a manufacturer with registered premises (paragraph (a)); and
- . must be aimed at the production of bountiable equipment within the bounty period which
 - contains new or improved materials or products; or
 - incorporates new or improved processes; or
 - applies new or improved system design or system engineering (paragraph (b) refers).

System design or engineering activity for the purposes of paragraph (b) must have general application to more than one customer, as customising to meet the special needs of an individual customer is expressly excluded (subparagraph (b)(iii)).

New subsection 3A(2) provides that activities such as;

- market research and sales promotion;
- quality control;
- cosmetic modifications or stylistic changes; and
- management studies or efficiency surveys

are not to be treated as systematic, experimental or investigative for the purposes of subsection 3A(1), and therefore will fall outside the definition of R&D. The exclusion principally proceeds on the ground that such activities are not sufficiently innovative and do not involve the technical risk which is commonly associated with R&D.

Value added

Clause 5

amends section 6 of the Principal Act to clarify and limit the expenditure on research and development which can be included in the factory costs incurred by a manufacturer of bountiable equipment, and thus be included as eligible bountiable costs in a claim for computer bounty.

Paragraph (a) omits subsection 6(2) of the Act and substitutes a new subsection which requires that for expenditure on research and development to qualify for inclusion in a manufacturer's bountiable factory costs for a particular accounting period, that research and development must be likely to result in the manufacture of bountiable equipment within the bounty period (ie. by 31 December 1995).

- . The current provision does not contain this requirement concerning production or a likelihood of production within the bounty period. It had therefore been possible to legitimately claim R&D costs under the current scheme which might only result in the manufacture of bountiable equipment well past the expiration of the scheme.

The substituted subsection (2) also removes any direct reference to system design and system engineering costs, as these activities are now covered by the new definition of research and development (Clause 4, new subparagraph 3A(1)(a)(iii) refers).

Paragraph (b) amends paragraph 6(5)(c) to omit the reference to "design, research or development" and substitute "research and development". This is a technical amendment consequential on the new definition of research and development which includes system design (Clause 4, new subparagraph 3A(1)(a)(iii) refers).

Claims for payment of bounty

Clause 6 amends section 13 of the Principal Act to remove the requirement in paragraph (2)(d) that a claim for bounty be lodged with Customs in the State or Territory of manufacture. The substituted paragraph (2)(d) provides that a claim for bounty must be lodged with a Collector for a State or Territory or with the Comptroller-General, without reference to the place of manufacture. This amendment will allow interstate manufacturing operations to lodge consolidated claims in the one location, and reflects the similar administrative reform in other recent bounty Acts.

Variation of inadequate claims

Clause 7 amends section 14 of the Principal Act to allow a person to lodge a variation of an inadequate claim with a Collector for a State or Territory or with the Comptroller-General, without reference to the place of manufacture. This amendment is consequential on the similar reform outlined for the amendment to section 13 effected by Clause 6 above.

Variation of excessive claims

Clause 8 amends section 15 of the Principal Act to allow a variation of an excessive claim to be lodged by a person with a Collector for a State or Territory, or with the Comptroller-General, without reference to the place of manufacture. This amendment is consequential on the similar reform outlined for the amendment to section 13 effected by Clause 6 above.

Manufacturers to furnish returns of cost

Clause 9 amends section 16 of the Principal Act to allow manufacturers to lodge returns of factory costs with a Collector in a State or Territory or with the Comptroller-General, without reference to the place of manufacture. This amendment is consequential on the similar reform outlined for the amendment to section 13 effected by Clause 6 above.

Accounts

Clause 10 repeals section 21 of the Principal Act and substitutes a new section which remakes the record keeping obligations which apply to persons claiming bounty under this Act, to enable more effective substantiation of alleged eligible expenditures.

New subsection 21(1) provides that a person who has lodged a claim for bounty under section 13 of the Act must keep for three years after lodging the claim all accounts, books, documents and other records that record and explain the claim and that are necessary for the Comptroller-General to be able to substantiate the claim.

The penalty for not keeping such records for the required period is \$3000.

New subsection 21(2) provides that a person who receives an advance on account of bounty under section 12 of the act must also keep all accounts, books, documents and records which record the particulars of the advance, and any claims to which the advance is applied, for a period of 3 years after the last relevant claim is lodged.

The penalty for not keeping those records for the required period is \$3000.

New subsection 21(3) is a standard record-keeping exemption provision, and provides that the record keeping requirements in subsections (1) and (2) do not apply to the records of a company that has gone into liquidation and has been dissolved or to records which the regulations might declare to be records to which the section does not apply.

Stock-taking and inspection of production and accounts

Clause 11 amends section 24 of the Principal Act to extend the power to inspect accounts, books,

documents and other records to specifically cover records relating to the conduct of research and development. The current paragraph 24(1)(f) only refers to records relating to the actual manufacture of bountiable equipment, and not to the conduct of research and development under the bounty scheme which may not actually result in the manufacture of bountiable equipment.

Power to require persons to answer questions and produce documents

Clause 12

amends section 25 of the Principal Act to extend the power to require a person to answer questions and to produce accounts, books, documents and other records to specifically cover questions and records relating to the conduct of research and development. The amendment is for the same reason as that outlined in relation to the amendment to section 24 effected by Clause 11 above.

Transitional

Clause 13

is a standard savings provision which provides that if a claim lodged after these amendments commence includes expenditure on research and development or system design and systems engineering costs incurred before the commencement, then that part of the claim to which that expenditure or those costs is related will be processed according to the provisions of the Act before the amendments.

