

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(As read a first time)*

**SUBSIDY (CULTIVATION MACHINES AND EQUIPMENT) BILL  
1986**

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1985-86

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(Presented pursuant to leave granted and read 1<sup>o</sup>, 22 October 1986)*

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

## A BILL

FOR

**An Act to provide for the payment of subsidy on the  
production, or in respect of the importation, of certain  
cultivation machines and related equipment, and for related  
purposes**

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 *Subsidy (Cultivation Machines and  
Equipment) Act 1986*.

#### Commencement

2. This Act shall be deemed to have come into operation on 15 April  
1986.

## General administration of Act

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 manufacturer or importer of subsidised equipment, has the meaning given by section 7; 5

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

“agriculture” means—

(a) the cultivation of the soil;

(b) the cultivation or gathering in of crops; or 10

(c) the rearing of live-stock,

and includes—

(d) viticulture, horticulture or pasturage; and

(e) other operations (including operations by way of soil or water conservation) connected with any operations referred to in paragraph (a), (b), (c) or (d); 15

“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 26;

“Collector” has the same meaning as in the *Customs Act 1901*; 20

“Comptroller” means the Comptroller-General of Customs;

“importer”, in relation to subsidised equipment, means—

(a) except where paragraph (b) applies, the person who was the beneficial owner of the equipment at the time of its arrival within the limits of the port or airport in Australia at which it was landed; or 25

(b) where the Comptroller declares, in writing, that he or she is satisfied that, before the lodging of a claim for subsidy in respect of the equipment, a specified person took over the rights of the person referred to in paragraph (a) in relation to the equipment—that specified person; 30

“manufacture” includes assemble;

“manufacturer”, in relation to subsidised equipment, means—

(a) a person who, at premises registered under section 23 in the name of the person, carried out a substantial process or substantial processes in the manufacture of the equipment (whether as intended supplier of the equipment, a contractor, a sub-contractor or otherwise), not being a person whose only contribution to the manufacture of the equipment was— 35

(i) the carrying out of design, research or development;

(ii) engaging in systems engineering;

(iii) the provision of software; or 40

- (iv) the development or testing of a prototype of the equipment;
- (b) a person who arranged with another manufacturer of the equipment for the carrying out at registered premises by the other manufacturer of a substantial process or substantial processes in the manufacture of the equipment; or
- (c) a person included in a prescribed class of persons who—
  - (i) carries on the business of trading in subsidised equipment; and
  - (ii) acquired ownership of the equipment pursuant to a firm order placed before the commencement of this Act under arrangements with another manufacturer of the equipment for the carrying out at registered premises by the other manufacturer of a substantial process or substantial processes in the manufacture of the equipment, being arrangements known as Original Equipment Manufacture or an OEM agreement;

“registered premises” means premises registered by the Comptroller under section 23;

“subsidised cultivation equipment” means equipment designed solely or principally as a part or accessory for a subsidised cultivation machine, being equipment that—

- (a) if it were imported into Australia, would be goods to which item 84.24 in Schedule 3 to the Tariff Act would apply; and
- (b) if it were imported into Australia and were goods to which section 19, but not sub-section 21 (4) or (6), of the Tariff Act applied, would be goods the duty of Customs in respect of which ascertained in accordance with Part II of the Tariff Act would be so ascertained by reference to a rate of duty that does not exceed 2%;

“subsidised cultivation machine” means a completely assembled machine that—

- (a) is of a kind used for—
  - (i) the tillage, cultivation and preparation of soil; or
  - (ii) seeding, planting or fertilizing plants;
- (b) if it were imported into Australia, would be goods to which item 84.24 in Schedule 3 to the Tariff Act would apply; and
- (c) if it were imported into Australia and were goods to which section 19, but not sub-section 21 (4) or (6), of the Tariff Act applied, would be goods the duty of Customs in respect of which ascertained in accordance with Part II of the Tariff Act would be so ascertained by reference to a rate of duty that does not exceed 2%;

“subsidised equipment” means—

- (a) a subsidised cultivation machine; or

(b) subsidised cultivation equipment;

“subsidy” means subsidy under this Act;

“subsidy period” means the period commencing on 15 April 1986 and ending on the terminating day;

“Tariff Act” means the *Customs Tariff Act 1982*;

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“terminating day” means 31 December 1990 or such later day, not being a day later than 30 June 1991, as is fixed by the Minister by notice published in the *Gazette* before 31 December 1990.

(2) For the purposes of this Act, a subsidised cultivation machine shall not be taken to have been used in commercial agriculture because only of the use of the machine in a demonstration for the purpose of promoting the sale of machines.

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(3) 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.

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(4) For the purposes of this Act, 2 persons shall be deemed to be associates of each other if, and only if—

(a) both being natural persons—

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(i) they are connected by a blood relationship or by marriage or by adoption; or

(ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;

(b) both being bodies corporate—

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(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;

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(c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);

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(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.

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## **Effect of amendments of Tariff Act**

### **5. (1) Where—**

(a) the Tariff Act is amended; and

(b) the amendment results in goods of a particular kind ceasing to be subsidised equipment,

the manufacture of goods of that kind the manufacture of which was commenced before, and completed after, the day on which the Tariff Act is amended shall, for the purposes of this Act, be deemed to have been completed on the day immediately preceding that day.

### **(2) Where—**

(a) the Tariff Act is amended;

(b) the amendment results in goods of a particular kind ceasing to be subsidised equipment; and

(c) the day on which the Tariff Act is amended (in this sub-section referred to as the “operative day”) is earlier than—

(i) the day (if any) on which notice of intention to propose a Customs Tariff alteration by way of that amendment was published in the *Gazette* in accordance with section 273EA of the *Customs Act 1901*;

(ii) the day (if any) on which a Customs Tariff alteration by way of that amendment was proposed in the Parliament; or

(iii) the day on which the Bill for the Act making that amendment was introduced into the Parliament,

whichever occurred first,

the manufacture of goods of that kind the manufacture of which was—

(d) completed after the operative day and before the day referred to in sub-paragraph (c) (i), (ii) or (iii) that occurred first; or

(e) commenced before, and completed after, the last-mentioned day,

shall, for the purposes of this Act, be deemed to have been completed on the day immediately preceding the operative day.

## **Sales value**

**6. (1)** For the purposes of this Act, the sales value of equipment (being subsidised equipment or equipment used in the manufacture of subsidised equipment) shall be deemed to be an amount ascertained in accordance with the formula—

$$A - (B + C),$$

where—

**A** is the price that was charged, or will be charged, for the equipment by a manufacturer of the equipment in a sale of the equipment by the manufacturer to a person included in a class of persons to whom equipment of the same kind as the equipment is usually sold by manufacturers of equipment of that kind;

**B** is the amount (included in that price) for freight in respect of the delivery of the equipment from the premises in Australia where the last substantial process in the manufacture of the equipment was carried out in Australia;

**C** is such cost or amount (if any) as is prescribed. 5

(2) Where the manufacturer of equipment has not charged, and does not propose to charge, for the equipment, the Comptroller may, by writing signed by the Comptroller, determine the sales value of the equipment and the sales value of the equipment shall, for the purposes of this Act, be the value so determined. 10

(3) Where the Comptroller is unable to ascertain (whether because there is no relevant sale or otherwise) or verify the sales value of equipment or a price, cost, or amount, that affects that sales value, the Comptroller may, by writing signed by the Comptroller, determine the sales value of the equipment and the sales value of the equipment shall, for the purposes of this Act, be the value so determined. 15

(4) Where the Comptroller is satisfied—

(a) that the sales value of equipment was influenced because of a commercial, financial or other relationship between the manufacturer of the equipment, or an associate of the manufacturer, and the purchaser, or an associate of the purchaser, not being a relationship created by the sale itself; and 20

(b) that, because of that relationship, the amount of the sales value is higher than it would otherwise have been,

the Comptroller may, by writing signed by the Comptroller, determine the sales value of the equipment and the sales value of the equipment shall, for the purposes of this Act, be the value so determined. 25

(5) When making a determination under sub-section (2), (3) or (4) in relation to equipment, the Comptroller shall have regard to the lowest price known to him or her charged for comparable equipment by another manufacturer or importer in Australia. 30

(6) In this section, “manufacturer”, in relation to equipment (other than subsidised equipment) used in the manufacture of subsidised equipment, means a person who, if the equipment were subsidised equipment, would be a manufacturer of the equipment. 35

### **Accounting period**

7. A reference in this Act to an accounting period of a manufacturer or importer of subsidised equipment shall be construed as a reference to—

(a) where the manufacturer or importer has an accounting period in relation to that equipment of 12 months commencing on a day other than 1 July—that accounting period; or 40

(b) in any other case—a financial year.



### **Uniformity**

8. A power conferred on the Governor-General, the Minister or the Comptroller 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—manufactured subsidised equipment**

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

(2) Subsidy payable under this section in respect of subsidised equipment is payable to the manufacturer, or the manufacturers, of the equipment.

(3) A manufacturer of subsidised equipment is not entitled to receive a payment of subsidy under this section in respect of particular subsidised equipment unless—

- (a) all the processes in the manufacture of the equipment carried out in Australia by the manufacturer (if any) were carried out at registered premises;
- (b) the last substantial process in the manufacture of the equipment was carried out at registered premises;
- (c) the manufacture of the equipment was completed during the subsidy period; and
- (d) all components and materials used in the manufacture of the equipment were components that—
  - (i) had not been used previously as components of, or as parts in, other equipment; or
  - (ii) had not been re-conditioned or rebuilt.

(4) A manufacturer of a subsidised cultivation machine is not entitled to receive a payment of subsidy under this section in respect of the machine unless, during the subsidy period, the machine—

- (a) was sold, or otherwise disposed of, by the manufacturer or another manufacturer of the machine for use in Australia;
- (b) was sold, or otherwise disposed of, to the Commonwealth; or
- (c) was—
  - (i) prepared for sale by the manufacturer;
  - (ii) held in the manufacturer's stock; and
  - (iii) listed in the manufacturer's inventory of stock.

(5) A manufacturer of a subsidised cultivation machine is not entitled to receive a payment of subsidy under this section in respect of the machine if, before 15 April 1986, the machine—

- (a) was sold or otherwise disposed of to a person for use by that person in commercial agriculture; or
- (b) was used in commercial agriculture.

(6) A manufacturer of subsidised cultivation equipment is not entitled to receive a payment of subsidy under this section in respect of the equipment unless, during the subsidy period, the equipment— 5

- (a) was sold, or otherwise disposed of, to another person for use in Australia;
- (b) was sold, or otherwise disposed of, to the Commonwealth;
- (c) was used by the manufacturer in Australia in connection with the repair or servicing of subsidised equipment; or 10
- (d) was—
  - (i) prepared for sale by the manufacturer;
  - (ii) held in the manufacturer's stock; and
  - (iii) listed in the manufacturer's inventory of stock. 15

(7) A manufacturer of subsidised cultivation equipment is not entitled to receive a payment under this section in respect of the equipment if the equipment was used or is intended to be used by the manufacturer as original equipment in the manufacture of a subsidised cultivation machine manufactured by that manufacturer. 20

(8) Where—

- (a) by virtue of sub-section 23 (4), the Comptroller determines that the registration of premises shall be deemed to have taken effect on and from 15 April 1986;
- (b) on that day, the person who applied for the registration of the premises was directly or indirectly the owner in whole or in part of subsidised equipment; 25
- (c) the last substantial process in the manufacture of the equipment was completed by a manufacturer at those premises before that day; and 30
- (d) the equipment had not, before that day, been—
  - (i) sold, or otherwise disposed of, to a person for use by that person in commercial agriculture; or
  - (ii) used in commercial agriculture,

the equipment shall, for the purposes of this Act (other than section 12), be deemed to have been manufactured on that day. 35

(9) Where—

- (a) by virtue of sub-section 23 (4), the Comptroller determines that the registration of premises shall be deemed to have taken effect on and from 15 April 1986; and 40
- (b) on that day, the person who applied for the registration of the premises was the owner of partly manufactured subsidised equipment,

the manufacture of the equipment shall, for the purposes of this Act, be deemed to have commenced on that day.

**Specification of subsidy—imported subsidised equipment**

10. (1) Subject to this Act, where equipment that, on 15 April 1986, was subsidised equipment was, before that day, imported into Australia and entered for home consumption in accordance with the *Customs Act 1901*, subsidy is payable in respect of the importation into Australia of that equipment.

(2) Subsidy payable under this section in respect of subsidised equipment is payable to the importer of the equipment.

(3) Subsidy is not payable under this section in respect of the importation of subsidised equipment unless, during the subsidy period, the equipment was sold, or otherwise disposed of, by the importer or by a person who carries on the business of trading in subsidised equipment—

(a) to another person for use by that other person in commercial agriculture;

(b) to the Commonwealth;

(c) for use by a manufacturer of subsidised equipment as original equipment in the manufacture in Australia of a subsidised cultivation machine, being a machine that, during the subsidy period, was sold, or otherwise disposed of—

(i) to a person who carries on the business of trading in subsidised equipment;

(ii) to a person for use in commercial agriculture; or

(iii) to the Commonwealth; or

(d) for use in Australia in connection with the repair or servicing of a subsidised cultivation machine.

(4) Subsidy is not payable under this section in respect of the importation of subsidised equipment if, before 15 April 1986, the equipment was—

(a) sold, or otherwise disposed of, to a person for use by that person in commercial agriculture; or

(b) was used in commercial agriculture.

**Subsidy not payable**

11. (1) Subsidy is not payable to the Commonwealth, a State, a Territory or an authority of the Commonwealth, of a State or of a Territory (including an educational institution established by the Commonwealth, a State or a Territory).

(2) Subsidy is not payable in respect of subsidised equipment on which bounty has become, or will become, payable under the *Subsidy (Grain Harvesters and Equipment) Act 1985*.

**Amount of subsidy—manufactured subsidised equipment**

**12. (1)** The subsidy payable under section 9 in respect of subsidised equipment manufactured before 15 April 1986 is an amount equal to 10% of the sales value of the equipment.

**(2)** The subsidy payable under section 9 in respect of subsidised equipment manufactured on or after 15 April 1986 is an amount equal to 10% of the sales value of the equipment less— 5

(a) the amount of any subsidy, or any bounty or subsidy under another Act, paid or payable in respect of parts or equipment incorporated in the subsidised equipment; and 10

(b) an amount equal to 12% of the value for duty, within the meaning of the *Customs Act 1901*, of any imported parts or equipment incorporated in the subsidised equipment, being parts or equipment that are goods to which item 84.24 in Schedule 3 to the Tariff Act applied. 15

**Amount of subsidy—imported subsidised equipment**

**13.** The subsidy payable under section 10 in respect of subsidised equipment to the importer of the equipment is an amount equal to the difference between—

(a) the amount of any duties of Customs that have been paid in respect of the equipment; and 20

(b) the amount of any refunds, rebates or remissions of those duties.

**Availability of subsidy**

**14. (1)** Notwithstanding any other provision of this Act, if the Comptroller is of the opinion that the amount available in a financial year for payment of subsidy will be insufficient to meet all valid claims for subsidy payable in that year, the Comptroller may, subject to the regulations— 25

(a) defer the making of such payments of subsidy as the Comptroller considers appropriate; and 30

(b) make payments of subsidy in such order as the Comptroller considers appropriate.

**(2)** Notwithstanding any other provision of this Act, if money is not appropriated by the Parliament for the purpose of the payment of subsidy in a financial year, a person is not entitled to be paid subsidy in that year. 35

**Good quality of subsidised equipment**

**15.** Subsidy is not payable in respect of subsidised equipment if the Comptroller declares in writing that, in his or her opinion, the equipment is not of good and merchantable quality.

### **PART III—PAYMENT OF SUBSIDY**

#### **Advances on account of subsidy**

**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.

5       **(2)** If a person receives, by way of advances on account of subsidy in respect of particular subsidised equipment, an amount that exceeds the amount of subsidy payable to the person in respect of that equipment, the person is liable to repay to the Commonwealth the amount of the excess.

10       **(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.

15       **(4)** If, at the expiration of an accounting period of a manufacturer or importer of subsidised equipment, the manufacturer or importer has received, by way of advances an account of subsidy that may become payable to the manufacturer or importer during that period in respect of subsidised equipment, an amount that exceeds the sum of—

- 20       (a) the amount of subsidy that became payable to the manufacturer or importer during that period in respect of subsidised equipment; and  
      (b) the amount or amounts (if any) paid to the manufacturer or importer during that period in respect of subsidised equipment that the manufacturer or importer is liable to repay to the Commonwealth by virtue of sub-section (2) or (3),

25       the manufacturer or importer is liable to repay to the Commonwealth the amount of the excess.

#### **Claims for payment of subsidy**

**17. (1)** A person who claims to be entitled to be paid an amount of subsidy in respect of subsidised equipment may lodge a claim for payment to the person of the amount.

30       **(2)** A claim may not be made for an amount of bounty 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 equipment shall—

- 35       (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  
40       (d) be lodged with a Collector for a State or Territory, or with the Comptroller, within 12 months after the day on which the condition referred to in sub-section 9 (4) or (6) or 10 (3), as the case requires, was complied with in respect of the subsidised equipment.

(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 27 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 amount of subsidy in respect of subsidised equipment to which the claim relates— 5
  - (i) except where sub-paragraph (ii) applies—approve, in writing, payment of the amount; or 10
  - (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 15
    - (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 20
- (b) if the Comptroller is not so satisfied—refuse, in writing, to approve payment of subsidy in respect of the equipment 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 made within 30 days after the lodging of the claim and approving payment of the amount of subsidy claimed, 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 inadequate claims** 30

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 equipment that was less than the amount of subsidy that the person was entitled to claim in respect of that equipment, the person may lodge a claim for payment to the person of the difference between the 2 amounts. 35

(2) A claim under sub-section (1) in respect of subsidised equipment shall—

- (a) be in accordance with the appropriate approved form; 40
- (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 Territory, or with the Comptroller, within 12 months after the day on which the condition referred to in sub-section 9 (4) or (6) or 10 (3), as the case requires, was complied with in respect of the subsidised equipment.

5 (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 be dealt with under sub-section 17 (4) as if they were one claim under section 18.

10 (4) As soon as practicable after the lodgment of a claim under sub-section (1) to which sub-section (3) does not apply, the Comptroller shall, after examining the claim and causing such inquiries as the Comptroller considers necessary to be made (including inquiries involving the exercise of powers under sections 27 and 28)—

- 15 (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 subsidy in respect of subsidised equipment 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 subsidy in respect of the equipment to which the claim relates.

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

#### **Variation of excessive claims**

30 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 a claim for an amount of subsidy in respect of subsidised equipment that exceeds the amount of subsidy that the person was entitled to claim in respect of that equipment by more than \$100, the person shall, within 28 days after discovering the excess, lodge an

35 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 imprisonment for 6 months, or both; or
- 40 (b) in the case of a body corporate—\$5,000.

(2) An acknowledgment under sub-section (1) in respect of subsidised equipment 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 Territory or with the Comptroller.

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(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 27 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.

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#### **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.

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(2) Where—

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(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—

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(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

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(ii) that—

(A) the cost of endeavouring to recover the overpayment is so high; and

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(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,

5 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 33 for the year in which the Comptroller so refrained.

### Forms

21. (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—

- 15 (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;
- 20 (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
- 25 (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.

30 (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—

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

### **Recovery of repayments**

**22. (1)** Where a person is liable to repay an amount to the Commonwealth under section 16, 19 or 20, the Commonwealth may recover that amount as a debt due to the Commonwealth by action in a court of competent jurisdiction.

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**(2)** Where a person is liable to repay an amount to the Commonwealth under section 16, 19 or 20, 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.

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## **PART IV—ADMINISTRATION**

### **Registration of premises**

**23. (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 writing, by a person who carries on, or proposes to carry on, the manufacture of subsidised equipment at those premises.

**(3)** Subject to sub-sections (6), (7) and (8), 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 on, or proposes to carry on, the manufacture of subsidised equipment at those premises, the Comptroller shall—

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**(a)** register those premises in the name of the applicant by signing a notice, in writing, specifying the day on which it was signed and stating that the premises have been so registered and causing that notice to be served, either personally or by post, on the applicant; or

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**(b)** refuse to register those premises and cause a notice, in writing, stating that the Comptroller has refused to register those premises to be served, either personally or by post, on the applicant.

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**(4)** The registration of premises under this section has effect from the day on which the notice under paragraph (3) (a), in relation to the premises, is signed, or such earlier day, not being a day earlier than 15 April 1986, as is determined by the Comptroller and specified in that notice.

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**(5)** The regulations may prescribe conditions to be complied with in connection with the manufacture of subsidised equipment at registered premises.

**(6)** If conditions have been prescribed under sub-section (5), the Comptroller shall not register premises under this section unless the

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Comptroller is satisfied that the conditions have been, or will be, complied with in respect of those premises.

5 (7) 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.

10 (8) Where an applicant for the registration of premises under this section was not, on 15 April 1986, engaged in the manufacture of subsidised equipment at those premises, 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 manufacturing subsidised equipment.

(9) Where—

15 (a) premises are registered under this section; and

(b) the person is whose name the premises are so registered and a person who carries on, or proposes to carry on, the manufacture of subsidised equipment at those premises (in this sub-section referred to as the “transferee”) make a joint application in writing to the  
20 Comptroller for the transfer of the registration of the premises to the name of the transferee,

the Comptroller shall transfer the registration of those premises to the name of the transferee by causing a notice, in writing, stating that the registration has been so transferred to be served, either personally or by post, on the  
25 transferee.

(10) A transfer under sub-section (9) has effect from such day as is specified in the notice under that sub-section in relation to the transfer, being a day after the commencement of the subsidy period and not earlier than 6 months before the day on which the application for the transfer was  
30 made.

(11) Where the Comptroller becomes satisfied, in respect of premises registered under this section—

(a) that subsidised equipment is not being manufactured at those premises;

35 (b) that the manufacture of subsidised equipment at those premises is being carried on by a person other than—

(i) the person in whose name the premises are registered; or

(ii) a person who has made an application under paragraph  
(9) (b) in relation to the premises;

40 (c) if any conditions have been prescribed under sub-section (5)—that subsidised equipment is being manufactured at those premises otherwise than in accordance with those conditions; or

(d) that those premises are not being used solely or principally for industrial or commercial purposes,

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

- (e) the occupier of those premises; and
- (f) if the occupier is not the person in whose name those premises are registered—the person in whose name the premises are registered.      5

(12) For the purposes 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 that person at the premises shall be deemed to be properly addressed.      10

### **Accounts**

**24. (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—
  - (i) such particulars relating to the manufacture (including the cost of manufacture) or importation, as the case requires, of subsidised equipment in respect of which subsidy is, or may become, payable as are specified by the Comptroller in a notice published in the *Gazette*; and      15
  - (ii) such other particulars (if any) in relation to that equipment 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) in respect of the equipment concerned was lodged.      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

**25.** 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.      35

### **Appointment of authorised officers**      40

**26. (1)** The Comptroller may, by writing signed by the Comptroller, 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  
5 Act.

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

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

27. (1) For the purposes of this Act, an authorised officer may, at all  
10 reasonable times, enter—

(a) registered premises;

(b) premises where there is stored subsidised equipment in respect of which subsidy has been claimed, or, in the opinion of the authorised officer, is likely to be claimed; or

15 (c) premises where there are kept any accounts, books, documents or other records relating to the manufacture, importation or storage of subsidised equipment,

and may—

(d) inspect, or take stock of, any subsidised equipment;

20 (e) inspect any process in the manufacture of any subsidised equipment; and

(f) inspect the accounts, books, documents and other records relating to the manufacture or importation of subsidised equipment,

25 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, or of premises referred to in paragraph (1) (b) or (c), shall provide the authorised officer with all reasonable facilities and assistance for the effective exercise of the powers of the officer under this section.

30 Penalty:

(a) in the case of a natural person—\$1,000; or

(b) in the case of a body corporate—\$5,000.

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

28. (1) A Collector or an authorised officer may, by notice signed by  
35 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 manufacture or importation of subsidised equipment, to attend before him or her at a reasonable time and place specified in the notice and there to answer questions and to produce to him or her such  
40 accounts, books, documents and other records in relation to the manufacture or importation of subsidised equipment as are referred to in the notice.

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

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

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

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate—\$5,000.

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

(6) Where a manufacturer or importer of subsidised equipment, or a person employed by a manufacturer or importer of subsidised equipment, 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 manufacturer or importer, as the case may be, unless the Comptroller otherwise directs in writing, until the manufacturer, the importer or that person, as the case may be, has attended, answered the question or produced the account, book, document or other record, as the case may be.

**Power to examine on oath, &c.**

**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.

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

**Offences**

**30. (1)** A person shall not, without reasonable excuse, refuse or fail—

- 10       (a) to attend before a Collector or an authorised officer;  
      (b) to take an oath or make an affirmation; or  
      (c) to answer a question or produce an account, book, document or other record,

when so required pursuant to this Act.

15       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.

20       **(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  
      (b) in the case of a body corporate—\$50,000.

25       **(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  
30       (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 misleading in a material particular.

35       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.

40       **(4)** Where, in proceedings for an offence against sub-section (2) or (3) in respect of any conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that a director, servant or agent of the corporation, 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 corporation—

(a) by a director, servant or agent of the corporation within the scope of his or her actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of sub-sections (2) and (3), to have been engaged in by the corporation.

(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 subsidy.

(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 a 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 (9), 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. A prosecution for an offence against this Act may be commenced at any time within 3 years after the commission of the offence.



### **Recovery of 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 the sub-section, order the person to pay to the Commonwealth an amount not exceeding the amount of any subsidy wrongfully obtained by the person.

(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—

(i) does not have civil jurisdiction; or

(ii) has civil jurisdiction, but does not have civil jurisdiction to the extent of the amount,

the proper officer of the court shall issue to the Comptroller a certificate in the prescribed form containing the prescribed particulars.

(4) The certificate may, in the prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil jurisdiction to the extent of the amount ordered to be refunded to the Commonwealth.

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

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

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

## **PART V—MISCELLANEOUS**

### **Return for Parliament**

33. (1) The Comptroller shall, as soon as practicable after the end of each financial year in which subsidy is paid, furnish to the Minister a return setting forth—

(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 Parliament within 15 sitting days of that House after the return is received by the Minister.

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

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### **Delegation**

**34. (1)** The Minister may, either generally or otherwise as provided in the instrument of delegation, by writing signed by the Minister, delegate to—

(a) an officer of the Australian Customs Service; or

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(b) a person holding or performing the duties of an office in the Department,

all or any of the Minister’s powers under this Act, other than this power of delegation.

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

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

### **Application for review**

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

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(a) a decision of the Comptroller for the purposes of paragraph (b) of the definition of “importer” in sub-section 4 (1);

(b) a declaration by the Comptroller for the purposes of section 15;

(c) a decision of the Comptroller under paragraph 17 (4) (a) approving payment of subsidy;

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(d) a decision of the Comptroller under paragraph 17 (4) (b) refusing to approve payment of subsidy;

(e) a decision of the Comptroller under paragraph 18 (4) (a) approving a payment;

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(f) a decision of the Comptroller under paragraph 18 (4) (b) refusing to approve a payment;

(g) a decision of the Comptroller for the purposes of sub-section 19 (4);

(h) a decision of the Comptroller for the purposes of section 20;

(j) a decision of the Comptroller for the purposes of sub-section 23 (4);

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(k) a decision of the Comptroller refusing to register premises (other than a decision made under sub-section 23 (8));

(m) a decision of the Comptroller under section 23 transferring, or refusing to transfer, the registration of premises;

(n) a decision of the Comptroller under sub-section 23 (11) cancelling the registration of premises; or

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(p) a requirement by the Comptroller under section 25.

(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) (c), (d), (e), (f), (g) or (h) in respect of subsidised equipment, the Tribunal, if it considers it appropriate to do so, may—

(a) if a determination under sub-section 6 (2), (3) or (4) has been made in respect of that equipment or of equipment that includes that equipment, either—

(i) set aside that determination; or

(ii) set aside that determination and make a further determination under that sub-section in respect of the equipment to which the determination so set aside applied; or

(b) if a determination under that sub-section has not been made in respect of the equipment to which the decision applies or of equipment that includes that equipment, make a determination under that sub-section in respect of the equipment to which the decision applies.

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

### **Statement to accompany notice of decisions**

36. (1) Where the Comptroller makes a determination, decision or requirement of a kind referred to in sub-section 35 (1) and gives to the person or persons whose interests are affected by the determination, decision or requirement notice in writing of the making of the determination, decision or requirement, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the determination, decision or requirement to which the notice relates by or on behalf of the person or persons whose interests are affected by the determination, decision or requirement.

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

### **Money to be appropriated**

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

### **Transitional**

38. Sections 27, 28 and 30 do not operate so as to render unlawful anything done, or omitted to be done, before the day on which this Act receives the Royal Assent.

**Regulations**

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

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.      5







