

Nitrogenous Fertilizers Subsidy

No. 78 of 1966

An Act to provide for the Payment of Subsidy on the Production, or in respect of the Importation, of certain Nitrogenous Fertilizers.

[Assented to 29 October 1966]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Nitrogenous Fertilizers Subsidy Act 1966*. Short title.

2. This Act shall be deemed to have come into operation on the seventeenth day of August, One thousand nine hundred and sixty-six. Commencement.

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

- “authorized person” means a person appointed by the Minister under section 18 of this Act;
- “Collector” means Collector of Customs for a State;
- “manufactured 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;
- “natural sodium nitrate” means sodium nitrate that is not a manufactured nitrogenous substance;
- “registered premises” means premises registered by the Minister under section 16 of this Act;
- “subsidized goods” means goods in respect of which subsidy has or may become payable;
- “subsidy” means subsidy under this Act and includes an advance on account of subsidy under section 15 of this Act;
- “the Comptroller-General” means the Comptroller-General of Customs.

(2.) The period to which this Act applies is the period commencing on the seventeenth day of August, One thousand nine hundred and sixty-six, and ending on the thirty-first day of October, One thousand nine hundred and sixty-nine.

Stock food supplement.

4. For the purposes of this Act, use as a supplement to stock food shall be regarded as use as a fertilizer.

Subsidy in respect of goods sold by producer or importer after commencement of Act.

5.—(1.) Subject to this Act, a subsidy is payable on the production (whether before or after the commencement of the period to which this Act applies) of goods—

- (a) consisting of a manufactured nitrogenous substance;
- (b) produced at registered premises; and
- (c) during the period to which this Act applies, sold by the producer for use in Australia as a fertilizer.

(2.) Subject to this Act, a subsidy is payable in respect of the importation into Australia (whether before or after the commencement of the period to which this Act applies) of goods—

- (a) consisting of a manufactured nitrogenous substance, natural sodium nitrate or a mixture that contains a manufactured nitrogenous substance or natural sodium nitrate; and
- (b) during a period in respect of which a declaration made under section 12 of this Act applies, sold by the importer for use in Australia as a fertilizer.

(3.) Where a person sells goods to another person for use by the other person in producing a mixture consisting of those goods and other goods, being a mixture for use as a fertilizer, the first-mentioned person shall, for the purposes of this section, be deemed to have sold the first-mentioned goods for use as a fertilizer.

Subsidy in respect of existing stocks.

6.—(1.) Subject to this Act, a subsidy is payable on the production, before the commencement of the period to which this Act applies, of goods—

- (a) consisting of a manufactured nitrogenous substance;
- (b) sold by the producer before the commencement of that period; and
- (c) if the goods were not sold by the producer for use in Australia as a fertilizer—sold, before the commencement of, or during, that period, by another person for use in Australia as a fertilizer.

(2.) Subject to this Act, a subsidy is payable in respect of the importation into Australia, before the commencement of the period to which this Act applies, of goods—

- (a) consisting of a manufactured nitrogenous substance, natural sodium nitrate or a mixture that contains a manufactured nitrogenous substance or natural sodium nitrate;
- (b) sold by the importer before the commencement of that period; and

- (c) if the goods were not sold by the importer for use in Australia as a fertilizer—sold, before the commencement of, or during, that period, by another person for use in Australia as a fertilizer.

(3.) Where the Collector is satisfied that goods in respect of which, but for this sub-section, subsidy would be payable under this section—

- (a) were, before the commencement of this Act, acquired by a person for use by him as a fertilizer; or

- (b) will not be used in Australia as a fertilizer,

subsidy is not payable in respect of those goods under this section.

7. 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.

Avoidance of double subsidy.

8. Subject to the next succeeding section, subsidy in respect of goods is payable—

To whom subsidy payable.

- (a) where the subsidy is payable under sub-section (1.) of section 5 of this Act or under sub-section (1.) of section 6 of this Act—to the producer of the goods; or

- (b) where the subsidy is payable under sub-section (2.) of section 5 of this Act or under sub-section (2.) of section 6 of this Act—to the importer of the goods.

9. Subsidy payable to a person under the last preceding section may, subject to such conditions and restrictions, if any, as are prescribed, be paid to another person authorized by the first-mentioned person to receive the subsidy.

Subsidy may be paid to person authorized to receive it.

10. Subsidy in respect of goods is payable at the rate of Eighty dollars for each ton—

Rate of subsidy.

- (a) where the subsidy is payable on the production, or in respect of the importation into Australia, of goods consisting of a manufactured nitrogenous substance or of natural sodium nitrate—of the nitrogen content of the manufactured nitrogenous substance or the natural sodium nitrate, as the case may be, of which the goods consist; or

- (b) where the subsidy is payable in respect of the importation into Australia of goods consisting of a mixture that contains a manufactured nitrogenous substance or natural sodium nitrate—of the nitrogen content of any manufactured nitrogenous substance or any natural sodium nitrate contained in the mixture and, where natural sodium nitrate is contained in the mixture, the nitrogen content of any potassium nitrate so contained.

Benefit of
subsidy to be
passed on to
purchasers.

11.—(1.) Where the Minister is not satisfied that the prices being charged by a producer or importer of subsidized goods to purchasers in respect of the sale of the goods are such as to pass on to the purchasers the full benefit of subsidy payable to the producer or importer in respect of the goods under section 5 of this Act, the Minister may direct that subsidy payable under that section shall not be paid to the producer or importer.

(2.) Where the Minister is not satisfied that the full benefit of an amount of subsidy payable under section 6 of this Act in respect of any goods will be passed on to the person who owned the goods immediately before the subsidy became payable, the Minister may direct that the subsidy shall not be paid in respect of those goods.

Periods during
which imports
may be
subsidized.

12.—(1.) Where the Minister is of the opinion that the requirements of primary producers in Australia for nitrogenous fertilizers during a period included in the period to which this Act applies will not be satisfied by the supply of nitrogenous fertilizers produced in Australia, he may, by instrument in writing, declare that subsidy under this Act is, in relation to that first-mentioned period, payable in respect of such quantity of imported nitrogenous fertilizers as is, by reference to nitrogen content, specified in the declaration.

(2.) A declaration under this section may, by instrument in writing, be varied from time to time by the Minister.

(3.) Where the quantity of goods, as determined by reference to nitrogen content, in respect of which, but for this sub-section, subsidy would, during a period in respect of which a declaration under this section applies, become payable under sub-section (2.) of section 5 of this Act exceeds the quantity of nitrogenous fertilizers specified in the declaration—

- (a) subsidy is not payable under that sub-section in respect of the excess quantity of goods; and
- (b) for the purpose of ensuring that subsidy is not so payable in respect of the excess quantity of goods—subsidy in respect of particular goods shall be paid only in such cases as the Minister determines.

(4.) Where the Minister is of the opinion that the last preceding sub-section may apply in relation to a period in respect of which a declaration under this section applies, he may withhold payment of subsidy in respect of any goods in respect of which, during that period, subsidy becomes payable under sub-section (2.) of section 5 of this Act until he has ascertained whether the last preceding sub-section applies in relation to the period and, if it so applies, until he has ascertained the extent of the excess quantity of goods in respect of which subsidy is not payable under that sub-section.

13. Subsidy is not payable in respect of any goods unless the Comptroller-General is satisfied that they are of good and merchantable quality. Good quality essential.

14. Subsidy is not payable to the person to whom, under section 8 of this Act, subsidy is payable unless he satisfies the Minister that he has substantially complied with the requirements of this Act and the regulations. Subsidy not payable unless Act complied with.

15.—(1.) An advance on account of subsidy may be made to a producer or importer on such terms and conditions (including conditions with respect to the passing on to purchasers of subsidized goods from the producer or importer of the full benefit of the amount of the advance) as are approved by the Minister. Advances on account of subsidy.

(2.) If a person receives by way of advances in respect of subsidy on any goods an amount greater than the amount of subsidy payable in respect of those goods, he is liable to repay to the Commonwealth the amount of the excess, and the Commonwealth may recover the amount of the excess as a debt due to the Commonwealth by action in a court of competent jurisdiction.

16.—(1.) The regulations may prescribe conditions to be complied with, for the purposes of this Act, in connexion with the production of subsidized goods at registered premises. Registration of premises.

(2.) Where a person carries on, or proposes to carry on, the production of subsidized goods at any premises, he may apply to the Minister for the registration of those premises for the purposes of this Act.

(3.) If any conditions have been prescribed under sub-section (1.) of this section, the Minister shall not register the premises unless he is satisfied that those conditions have been, or will be, complied with.

(4.) The Minister may require an applicant under this section to furnish such information in connexion with the application as the Minister considers necessary for the purposes of this Act and may refuse to register the premises until the information is furnished to his satisfaction.

(5.) Subject to the last two preceding sub-sections, if, in the opinion of the Minister, subsidized goods are, or are proposed to be, produced at the premises in respect of which the application is made, he shall register those premises for the purposes of this Act.

(6.) If the Minister so determines, the registration shall be deemed to have taken effect from a date specified by the Minister, which may be a date before the commencement of this Act.

(7.) Where the Minister is satisfied—

- (a) that subsidized goods are not being produced at registered premises;
- (b) that subsidized goods are not being so produced by the person who applied for registration of the premises; or
- (c) if any conditions have been prescribed under sub-section (1.) of this section, that subsidized goods are not being so produced in accordance with those conditions,

he may, by notice in writing served personally or by post on the occupier or, if the occupier is not the person who applied for the registration of the premises, on that person, cancel the registration of the premises.

(8.) For the purposes of the application of section 29 of the *Acts Interpretation Act 1901–1964* to the service of a notice under the last preceding sub-section, a notice posted as a letter addressed to the occupier, or to the person who applied for the registration of the premises, at the registered premises shall be deemed to be properly addressed.

Accounts, &c.

17.—(1.) A producer or importer of subsidized goods is not entitled to subsidy unless he keeps, to the satisfaction of the Minister, accounts, books and documents showing, from time to time, such information as the Minister requires with respect to—

- (a) in the case of a producer—the production and sale by the producer of subsidized goods; and
- (b) in the case of an importer—the importation and sale by the importer of subsidized goods.

(2.) A producer or importer of subsidized goods is not entitled to subsidy unless he furnishes to the Comptroller-General, in respect of each financial year in which subsidy is payable—

- (a) such information and accounts as the Minister requires in relation to—
 - (i) in the case of a producer—the production and sale by the producer of subsidized goods; and
 - (ii) in the case of an importer—the importation and sale by the importer of subsidized goods; and
- (b) if so directed by the Minister—a certificate signed by the producer or importer, as the case may be, that the information and accounts so furnished are true and correct in every particular and a certificate, signed by an auditor, that the information and accounts are true and correct to the best of the auditor's knowledge and belief.

(3.) For the purposes of the last preceding sub-section, "financial year", in relation to a producer or importer, means a year that is a year of income for the purposes of the law relating to income tax in its application to him.

18. The Minister may, by writing under his hand, appoint persons to be authorized persons for the purposes of this Act.

Appointment of authorized persons.

19.—(1.) For the purposes of this Act, an authorized person may, at all reasonable times, enter—

Stocktaking and inspection of production and accounts, &c.

(a) registered premises; or

(b) any premises where there are stored or kept subsidized goods in respect of which subsidy has been claimed, or, in the opinion of the authorized person, is likely to be claimed,

and may—

(c) inspect or take stock of any subsidized goods;

(d) inspect the processes of production of any subsidized goods;

(e) take samples of any subsidized goods; and

(f) inspect the accounts, books and documents relating to the production, importation or sale of subsidized goods.

(2.) The occupier or person in charge of any registered premises or of premises referred to in paragraph (b) of the last preceding sub-section shall provide the authorized person with all reasonable facilities and assistance for the effective exercise of his powers under this section.

Penalty: One hundred dollars.

20.—(1.) The Comptroller-General, a Collector or an authorized person may, by notice in writing, require a person whom he believes to be capable of giving information relevant to the operation of this Act in relation to the production, importation, storage, sale or use of subsidized goods to attend before him at the time and place specified in the notice and there to answer questions and to produce to him such accounts, books and documents in relation to the production, importation, storage, sale or use of subsidized goods as are referred to in the notice.

Power to require person to answer questions and produce documents.

(2.) The Comptroller-General, a Collector or an authorized person may make and retain copies of, or extracts from, any accounts, books or documents produced in pursuance of this section.

(3.) A person is not excused from answering a question or producing any accounts, books or documents when required to do so under this section on the ground that the answer to the question or the production of the accounts, books or documents might tend to incriminate him or make him liable to a penalty, but his answer to any such question is not admissible in evidence against him in proceedings other than proceedings for an offence against paragraph (c) of sub-section (1.), or paragraph (c) of sub-section (2.) of section 23 of this Act.

(4.) Where a producer, importer or person employed by a producer or importer has failed to attend or to answer a question or to produce any account, book or document when required to do so under this section, subsidy is not payable to the producer or importer, unless the Minister otherwise directs, until the producer, importer or that person has attended, answered the question or produced the account, book or document, as the case may be.

**Power to
examine on
oath.**

21.—(1.) The Comptroller-General, a Collector or an authorized person may administer an oath to a person required to attend before him in pursuance of the last preceding section and may examine that person on oath.

(2.) Where any such person conscientiously objects to take an oath, he may make an affirmation that he conscientiously objects to take an oath and that he will state the truth, the whole truth and nothing but the truth to all questions asked him.

(3.) An affirmation so made is of the same force and effect and entails the same penalties as an oath.

**Security for
compliance
with Act.**

22. The Minister may require a producer or importer of subsidized goods to give security by bond, guarantee or cash deposit, or by all or any of those methods, for compliance by him with the provisions of this Act and the regulations or for the performance of an undertaking given by him for the purposes of this Act or the regulations, and the producer is not entitled to subsidy unless he gives security accordingly.

Offences.

23.—(1.) A person shall not refuse or fail—

- (a) to attend before the Comptroller-General, a Collector or an authorized person;
- (b) to be sworn or make an affirmation; or
- (c) to answer a question or produce an account, book or document,

when so required in pursuance of this Act.

Penalty: One hundred dollars.

(2.) A person shall not—

- (a) obtain payment of subsidy that is not payable;

- (b) obtain payment of subsidy by means of a false or misleading statement; or
- (c) present to an officer or other person doing duty in relation to this Act or the regulations an account, book or document, or make to such an officer or person a statement, that is false or misleading in a material particular.

Penalty: One thousand dollars or imprisonment for twelve months.

(3.) Where a person is convicted of an offence against the last preceding sub-section, 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.

(4.) Where a court has made an order under the last preceding sub-section, a certificate under the hand of the appropriate officer of the court specifying the amount ordered to be refunded and the person by whom the amount is payable may be filed in a court having civil jurisdiction to the extent of that amount and is thereupon enforceable in all respects as a final judgment of that court.

24.—(1.) The Comptroller-General shall, as soon as practicable after the end of each financial year in which subsidy is payable furnish to the Minister a return setting out—

Return for
Parliament.

- (a) the name and address of each person to whom subsidy was paid;
- (b) the quantity of subsidized goods in respect of which subsidy was paid to each such person;
- (c) the amount of subsidy paid to each such person; and
- (d) such other particulars, if any, as are prescribed.

(2.) The Minister shall cause a copy of the return to be tabled in each House of the Parliament within fifteen sitting days of that House after the return is received by him.

25.—(1.) The Minister or the Comptroller-General may either generally or in relation to a matter or class of matters and either in relation to the whole of the Commonwealth or to a State or part of the Commonwealth, by writing under his hand, delegate all or any of his powers and functions under this Act (except this power of delegation).

Delegation.

(2.) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3.) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister or the Comptroller-General, as the case may be.

Appropriation. 26. Subsidy is payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

Regulations. 27. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing—

- (a) the manner in which, and the time within which, applications for subsidy shall be made;
 - (b) the information to be furnished by applicants in connexion with applications for subsidy; and
 - (c) penalties not exceeding One hundred dollars for offences against the regulations.
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