Australian Customs Notice 1996 33

**ELIGIBILITY FOR BOUNTY OF COMPUTER OPERATING SOFTWARE**

# INTRODUCTION

The *Bounty (Computers) Act 1984* (the *Act*) provides for the payment of a bounty to a computer manufacturer on the basis of the value added in its production and the rate of bounty applying at the time of manufacture. One of the eligible costs for bounty purposes is the cost of "operating software". Differences of opinion have arisen among technical advisers as to the interpretation of this term. This notice is an attempt to clarify the meaning of the term "operating software", and provide a practical approach to the application of this term in the assessment of bounty claims.

# BACKGROUND

It is important to note that research and development expenditure has been excluded as an eligible factory cost by the *Bounty Legislation Amendment Act 1995* (the *Amendment Act*). This amendment applies to all products completed after 31 December 1995. Any subsequent bounty claims would be for the development and production of computer "operating software", and not for 'research and development' activities. This change is highlighted as many of the software claims for work completed prior to 31 December 1995 were of a research and development nature.

It should also be said that the dialogue with industry representatives and other professionals on the question of the definition of computer "operating software" has been extensive. Their contribution together with independent legal advice has helped in the formulation of this notice.

ISSUE

The *Act* provides for the payment of a bounty to manufacturers on the value added in the production of computers and "operating software or software for testing hardware in Australia". Paragraph 6(5)(h) of the *Act* excludes costs of software, other than "operating software" from being eligible for bounty.

Subsection 3(1) of the *Act* states that "operating software" has the same meaning as "operating system software" in Australian Standard 1189 (the Standard) of the Standards Association of Australia as in force from time to time. However, there is no such definition in the Standard. In the administration of the eligibilty criteria for "operating software" there has been reliance upon the definition of "*operating system*" in Part 1 of the Standard to ascertain eligibility of computer software for bounty. An "*operating system*" is defined as:

*Software* that controls the *execution of programs* and that may provide services such as *resource allocation, scheduling, input/output control*, and *data* management.

The issue which has arisen is whether the definition of "*system software*" in Part 20 of the Standard, should be read with the term "*operating system*" when establishing the meaning of "operating system software". "*System software*" is defined as:

Application-independent *software* that supports the running of *application software*. This part also defines "*application software*" as:

A *software [program]* that is specific to the solution of an *application problem*.

Without labouring the definitional terminology, an application problem is one submitted by an end user and requiring information processing for its solution. By relying on both the definition of "*operating system*" and "*system software*" in the Standard, "operating system software" can be distinguished from "*application software*".

ADVICE

The *Act* can be taken to be distinguishing between "operating systems software" which is bountiable and "*application software*" which is not. There is a need to make such a distinction when considering eligibility for bounty under the *Act*, as "*application software*" is clearly excluded from eligibility. However, administering

the *Act* strictly on the basis of the definition of an "*operating system*" could disadvantage those developments where "*system software*" is closely associated with an "*application software*" component.

As a practical test for bounty eligibility, software which can be characterised as "*application software*" is to be excluded. This should reduce uncertainty and provide fairness in the application of the eligibility criteria. The test will be applied in the assessment of all future and existing claims being processed.

MARION GRANT

FOR CHIEF EXECUTIVE OFFICER

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