

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Presented and read a first time

(Foreign Affairs and Trade)

A BILL

FOR

An Act to amend the *Export Market Development Grants Act 1974*, and for related purposes

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Export Market Development Grants Amendment Act (No. 2) 1994*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Amendments

3. The Act specified in the Schedule is amended as set out in the Schedule. 5

Application

General

4.(1) Subject to this section, the amendments made by Parts 2 to 12 (inclusive) of the Schedule apply in relation to claims for grant in relation to periods beginning on or after 1 July 1994. 10

Tourism

(2) If paragraph 14(1)(c) of the *Export Market Development Grants Act 1974* applies to a claimant in relation to a claim period that consists of, or is included in, the year beginning on 1 July 1994, the amendments made by Part 2 of the Schedule to this Act do not apply in determining the claimant's eligible expenditure for the year beginning on 1 July 1993. 15

AUSTRADE assistance schemes

(3) Section 11P of the *Export Market Development Grants Act 1974* as amended by Part 6 of the Schedule to this Act does not apply to a project or activity approved for the purposes of a scheme of a kind referred to in paragraph (b) of that section unless the approval is given after the commencement of this section. 20

Change in ownership of business etc.

(4) The amendments of section 19 of the *Export Market Development Grants Act 1974* made by Part 14 of the Schedule to this Act apply in relation to: 25

- (a) the sale or other transfer of a business or part of a business, if the sale or transfer occurs on or after the eligible starting day; or
- (b) a change in the membership of a partnership, if the change occurs on or after the eligible starting day; or 30
- (c) any other business arrangement, if the arrangement was entered into on or after the eligible starting day.

For this purpose, the “**eligible starting day**” is the earliest day on which principles formulated under section 19A of the *Export Market Development Grants Act 1974* take effect. 35

SCHEDULE

Section 3

**AMENDMENT OF THE EXPORT MARKET DEVELOPMENT
GRANTS ACT 1974**

**PART 1—4-YEAR EXTENSION OF THE EXPORT MARKET
DEVELOPMENT GRANTS SCHEME**

- 1. Subsection 3(1) (paragraph (e) of the definition of “grant year”):**
Omit “4”, substitute “8”.

PART 2—TOURISM

- 2. Subsection 3(1):**

Insert:

“‘**designated tourism services**’ means services that are designated tourism services because of regulations under subsection 43(3C);”.

- 3. Subsection 3(4):**

Omit “or eligible tourism services”, substitute “, eligible tourism services or designated tourism services”.

- 4. Subsection 3A(1):**

After “a reference to the sum of” insert “the following”.

- 5. Paragraph 3A(1)(f):**

Omit “and”.

- 6. Paragraph 3A(1)(g):**

Omit “services.”, substitute “services;”.

- 7. Subsection 3A(1):**

Add at the end:

“(h) the amount or value of the consideration received by that person during that period for the supply by that person at any time of designated tourism services.”.

- 8. Paragraph 11C(2)(h):**

Omit “services.”, substitute “services;”.

- 9. Subsection 11C(2):**

Add at the end:

“(i) designated tourism services.”.

- 10 Subparagraph 11E(1)(a)(vii):**

Omit “and”, substitute “or”.

SCHEDULE—continued

11. Paragraph 11E(1)(a):

Add at the end:

“(viii) designated tourism services; and”.

12. Section 11Z:

Add at the end:

“(13) Expenditure is qualifying export development expenditure of a person to whom this section applies if:

(a) in the Commission’s opinion, it is incurred primarily and principally for the purpose of:

(i) creating or seeking opportunities for; or

(ii) creating or increasing demand for;

the supply by that person of designated tourism services; and

(b) the supply by that person is for reward and in the course of carrying on business in Australia.”.

13. Subparagraph 11ZA(3)(a)(vi):

Omit “and”, substitute “or”.

14. Paragraph 11ZA(3)(a):

Add at the end:

“(vii) designated tourism services; and”.

15. Sub-subparagraph 11ZE(3)(b)(ii)(H):

Add at the end “or”.

16. After sub-subparagraph 11ZE(3)(b)(ii)(H):

Insert:

“(I) any designated tourism services;”.

17. Section 14B:

Add at the end:

“(5) In working out the amount of the claimant’s export earnings for the claim period for the purposes of this section, treat as the claimant’s export earnings for the claim period an amount equal to 100% of the amount or value of any consideration that was derived by the claimant during the claim period:

(a) from a person who was, at the time of the derivation:

(i) a resident of Australia; and

(ii) a supplier of eligible tourism services; and

(b) for the supply by the claimant of designated tourism services.”.

SCHEDULE—continued

18. Subsection 15(7):

Omit “or eligible tourism services”, substitute “, eligible tourism services or designated tourism services”.

19. Subsection 15(8) (definition of “services”):

Add at the end:

“(f) designated tourism services;”.

20 Subsections 16(3) and (4):

Omit the subsections, substitute:

“(3) A claimant’s **provisional grant amount** for a claim period is the amount worked out using whichever of the following paragraphs is applicable:

- (a) if section 15 does not apply to the claimant—the amount worked out using the formula:

Adjusted eligible expenditure

2

where:

‘**Adjusted eligible expenditure**’ means the eligible expenditure incurred by the claimant during the claim period, reduced by:

- (i) if no part of that eligible expenditure was in respect of designated tourism services—\$15,000; or
- (ii) if the whole or a part of that eligible expenditure was in respect of designated tourism services (which whole or part is in this subparagraph called the ‘**DTS expenditure**’)—the sum of:
- (A) \$15,000; and
- (B) if the DTS expenditure exceeds \$15,000—50% of the excess;
- (b) if section 15 applies to the claimant—the amount worked out using the formula:

Adjusted eligible expenditure

2

where:

‘**Adjusted eligible expenditure**’ means the eligible expenditure in respect of new markets incurred by the claimant during the claim period, reduced by:

SCHEDULE—continued

- (i) if no part of that eligible expenditure was in respect of designated tourism services—\$15,000; or
- (ii) if the whole or a part of that eligible expenditure was in respect of designated tourism services (which whole or part is in this subparagraph called the ‘**DTS expenditure**’)—the sum of:
 - (A) \$15,000; and
 - (B) if the DTS expenditure exceeds \$15,000—50% of the excess.

“(4) If paragraph 14(1)(c) applies to a claimant in the claimant’s first grant year, the formula for calculating the provisional grant amount for that year is:

Adjusted eligible expenditure

2

where:

‘**Adjusted eligible expenditure**’ means the eligible expenditure incurred by the claimant as mentioned in paragraph 14(1)(c), reduced by:

- (a) if no part of that eligible expenditure was in respect of designated tourism services—\$30,000; or
- (b) if the whole or a part of that eligible expenditure was in respect of designated tourism services (which whole or part is in this paragraph called the ‘**DTS expenditure**’)—the sum of:
 - (i) \$30,000; and
 - (ii) if the DTS expenditure exceeds \$30,000—50% of the excess.”.

21. After subsection 16(6):

Insert:

“(6A) In working out the amount of the claimant’s export earnings for the claim period for the purposes of subparagraph (6)(b)(i):

- (a) reduce by 20% (or such other percentage as is prescribed) so much of those export earnings as are covered by paragraph 3A(1)(g); and
- (b) only take into account so much of those export earnings as are covered by paragraph 3A(1)(h) to the extent to which those earnings were derived under a contract between the claimant and a person resident outside Australia; and
- (c) treat as the claimant’s export earnings for the claim period an amount equal to 20% (or such other percentage as is prescribed) of the amount or value of any consideration that was derived by the claimant during the claim period:

SCHEDULE—continued

- (i) from a person who was, at the time of the derivation:
 - (A) a resident of Australia; and
 - (B) a supplier of eligible tourism services; and
- (ii) for the supply by the claimant of designated tourism services.”.

22 After subsection 43(3B):

Insert:

“(3C) The regulations may declare that services of a specified kind are designated tourism services.”.

PART 3—DEPARTURE TAX AND VISA COSTS

23 Subsection 11S(1):

Add at the end:

“; or (e) expenses by way of:

(i) departure tax; or

(ii) charge imposed by the *Passenger Movement Charge Act 1978*; or

(f) visa expenses.”.

24. Paragraph 11V(e):

Before “amounts paid or payable” insert “subject to subsection (2),”.

25. Section 11V:

Add at the end:

“(2) Paragraph (1)(e) does not apply to:

(a) departure tax; or

(b) charge imposed by the *Passenger Movement Charge Act 1978*.”.

**PART 4—SAMPLES, TECHNICAL INFORMATION, TENDERS
AND QUOTATIONS**

26. Paragraph 11D(1)(a):

Before “technical information” insert “written”.

27. Subsection 11D(3):

Before “technical information” (wherever occurring) insert “written”.

28. Section 11D:

Add at the end:

SCHEDULE—continued

“(4) This section does not apply to costs of delivery unless the costs are postage costs or freight costs.

Note: Section 25 of the *Acts Interpretation Act 1901* provides that ‘writing’ includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.”.

29. Paragraph 11E(1)(a):

Omit “tender or quotation”, substitute “written tender or written quotation”.

30. Subsection 11E(3):

Omit “tender or quotation” (wherever occurring), substitute “written tender or written quotation”.

31. Subsection 11E(4):

Omit “tender or quotation” (wherever occurring), substitute “written tender or written quotation”.

32. Section 11E:

Add at the end:

“(5) This section does not apply to costs of delivery unless the costs are postage costs or freight costs.

Note: Section 25 of the *Acts Interpretation Act 1901* provides that ‘writing’ includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.”.

**PART 5—SPECIAL GRANT CEILING FOR MEMBERS OF
COMPANY GROUPS**

33. Subsection 3(1):

Insert:

“‘**related company group**’ means a group of 2 or more bodies corporate, where each member of the group is related to each other member of the group;

Note: See subsection (12).”.

34. Section 3:

Add at the end:

“(12) For the purposes of this Act, the question whether a body corporate is related to another body corporate is to be determined in the same manner as that question is determined under the Corporations Law.

Note: See section 50 of the Corporations Law.”.

35. Subsection 13A(1):

After “(3)” insert “and section 22”.

SCHEDULE—continued

36. Subsections 16(1) and (2):

Add at the end:

“Note: See Division 4 for special rules about bodies corporate that are members of related company groups.”.

37. After section 20:

Insert:

“Division 4—Related company groups

Object etc.

“21.(1) The object of this Division is to modify the application of this Act to bodies corporate that are members of related company groups.

“(2) This Division does not apply to a claim or grant in respect of eligible expenditure of an approved joint venture or an approved consortium.

No first-half claims

“22.(1) A body corporate that is a member of a related company group at the end of the first 6 months of a grant year is not entitled to make a claim in relation to that 6 months.

Note: This subsection does not prevent the body corporate from making a full-year claim in relation to the grant year.

“(2) Subsection (1) does not apply to the grant year beginning on 1 July 1994.

Pro-rating of claims—\$250,000 group grant ceiling

When this section applies

“23.(1) This section applies to a claim for a grant in relation to a grant year if:

- (a) the claimant is a body corporate; and
- (b) the claim is a full-year claim or a balance-year claim; and
- (c) at the end of the grant year, the claimant was a member of a related company group (the ‘**claimant’s group**’); and
- (d) the amount of the group’s gross grants exceeds \$250,000.

Note: ‘Group’s gross grants’ is defined by subsection (7).

Pro-rating

“(2) Despite section 16, the amount of the claimant’s grant in respect of the claim is worked out using the formula:

$$\$250,000 \times \frac{\text{Claimant's gross grant}}{\text{Group's gross grants}}$$

SCHEDULE—continued

where:

‘Claimant’s gross grant’ means the amount that would have been the amount of the claimant’s grant in respect of the claim if it were assumed that this section had not been enacted.

Note: ‘Group’s gross grants’ is defined by subsection (7).

Notification

“(3) The claim must include:

- (a) a statement to the effect that the claimant was a member of a related company group as at the end of the grant year; and
- (b) a list of the names, company numbers (if applicable) and addresses of the bodies corporate that were, to the claimant’s knowledge, both:
 - (i) members of the claimant’s group at the end of the grant year; and
 - (ii) residents of Australia at any time during the grant year; and
- (c) notes explaining how each listed body was related to each other listed body as at the end of the grant year.

Note 1: ‘Company number’ is defined by subsection (8).

Note 2: ‘Knowledge’ is given an extended meaning by subsections (5) and (6).

Note 3: The following is an example of the operation of paragraph (3)(c). ABC Ltd and XYZ Ltd are listed. ABC Ltd and XYZ Ltd are subsidiaries (within the meaning of the Corporations Law) of LKM Holdings PLC (a British company). The paragraph (3)(c) notes should explain that ABC Ltd and XYZ Ltd are related to each other because they are subsidiaries (within the meaning of the Corporations Law) of LKM Holdings PLC.

Recovery of overpayments

“(4) For the purposes of subsection 40(1), if:

- (a) an amount of grant was paid to the claimant in respect of the claim; and
- (b) the claim did not comply with subsection (3) of this section;

the amount is taken to have been paid by the Commission in consequence of the making by the claimant of a statement that was false or misleading.

Note: Section 40 deals with the recovery of overpayments.

Knowledge of employee of claimant etc.

“(5) For the purposes of establishing a contravention of paragraph (3)(b), the knowledge of an individual employed by, or concerned in the management of, the claimant is taken to be knowledge of the claimant.

Claimant’s knowledge of other members of related company group

“(6) For the purposes of establishing a contravention of paragraph (3)(b), if, having regard to:

SCHEDULE—continued

- (a) a person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention of that paragraph;

the person ought reasonably to have known that a body corporate was covered by both subparagraphs (3)(b)(i) and (ii), the person is taken to have known that the body corporate was covered by both of those subparagraphs.

Group's gross grants

“(7) For the purposes of this section, the **group's gross grants** is the total of the grants that would have been payable in relation to the grant year to bodies corporate that were members of the claimant's group as at the end of the grant year if it were assumed that this section had not been enacted. For the purposes of working out that total, a grant is to be ignored if it is in respect of a first-half claim.

Note: See section 22 for restrictions on first-half claims.

Definition

“(8) In this section:

'company number' means an Australian Company Number or an Australian Registered Body Number.”.

**PART 6—NON-EMDG ASSISTANCE SCHEMES
ADMINISTERED BY THE COMMISSION**

38. Section 11P:

Repeal the section, substitute:

Non-EMDG assistance schemes administered by the Commission

“11P. Expenditure incurred in relation to a particular project or activity is non-claimable expenditure if, at the time when the expenditure is incurred, the project or activity is approved for the purposes of:

- (a) the scheme known as the International Trade Enhancement Scheme; or
- (b) any other scheme that:
 - (i) relates to the provision of financial assistance; and
 - (ii) is administered by the Commission; and
 - (iii) is not embodied in this Act.”.

SCHEDULE—continued

PART 7—OVERSEAS VISIT ALLOWANCE

39. Subsection 11L(5):

Omit “claimants”, substitute “persons (in this subsection and subsection (6) called the ‘principals’)”.

40. Subsection 11L(5):

Omit “claimant”, substitute “principal”.

41. Subsection 11L(5):

Omit “claimant’s”, substitute “principal’s”.

42. Subsection 11L(6):

Omit “claimant’s”, substitute “principal’s”.

43. Paragraph 11L(6)(a):

Omit “claimants”, substitute “principals”.

44. Paragraph 11L(6)(b):

Omit “claimants”, substitute “principals”.

45. Section 11L:

Add at the end:

“(7) For the purposes of subsections (5) and (6), if a person to whom this section applies undertakes, during the visit, qualifying export development activities on behalf of an approved joint venture or an approved consortium, the joint venture or consortium is taken to be a principal.”.

**PART 8—INSOLVENCY OR CONVICTION OF A MEMBER OF
AN APPROVED JOINT VENTURE OR AN APPROVED
CONSORTIUM**

46. After subsection 11UA(2):

Insert:

“(2A) Subject to subsection (3), expenditure of an approved joint venture or an approved consortium is non-claimable expenditure if it is incurred while any of the following bodies corporate is under insolvency administration:

- (a) a body corporate that is a member of the joint venture or consortium;
- (b) a body corporate that is a partner of a partnership that is a member of the joint venture or consortium.”.

SCHEDULE—continued

47. Subsection 11UA(3):

Omit “or (2)”, substitute “, (2) or (2A)”.

48. Paragraph 11UA(3)(a):

After “the body corporate” insert “, or each body corporate,”.

49. After subsection 11UB(3):

Insert:

“(3A) Expenditure of an approved joint venture or an approved consortium is non-claimable expenditure if it is incurred while any of the following individuals is under insolvency administration:

- (a) an individual who is a member of the joint venture or consortium;
- (b) an individual who is a partner of a partnership that is a member of the joint venture or consortium.”.

50. After subsection 11YA(5):

Insert:

“(5A) Expenditure of an approved joint venture or an approved consortium is non-claimable expenditure if it is incurred:

- (a) while the person:
 - (i) is a member of the joint venture or consortium; or
 - (ii) is a director of a body corporate that is a member of the joint venture or consortium; or
 - (iii) is a partner of a partnership that is a member of the joint venture or consortium; and
- (b) during the ineligible period.”.

PART 9—GRANTS IN RELATION TO NEW MARKETS

51. Subsection 15(2):

Omit “only if,”, substitute “only to the extent to which,”.

PART 10—CRIMINAL RECORDS

52. Section 13:

Add at the end:

“(7) The Commission may refuse to consider a claim unless the claimant gives the Commission such written consents (whether consents of the claimant or of any other person or persons) as the Commission requires to enable criminal records to be checked for the purposes of applying sections 11YA and 14A to the claim.”.

SCHEDULE—continued

PART 11—CAPITAL EXPENDITURE

53. Section 11N:

Repeal the section, substitute:

Capital expenditure

“11N. Expenditure of a capital nature is non-claimable expenditure unless it is expenses of the kind referred to in section 11F, 11J or 11K.”.

PART 12—REPUBLIC OF SOUTH AFRICA

54. Section 10:

Repeal the section.

**PART 13—FRAUD AND FALSE OR MISLEADING
STATEMENTS**

55. After subsection 39(1):

Insert:

“(1AA) For the purposes of establishing a contravention of subsection (1), if, having regard to:

- (a) a person’s abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention of that subsection;

the person ought reasonably have known that the amount was not payable, the person is taken to have known that the amount was not payable.”.

56. Paragraphs 39(1A)(a) and (b):

Omit the paragraphs, substitute:

- “(a) obtain, or attempt to obtain, an amount by way of grant by means of a statement that is false or misleading in a material particular, where the person:
 - (i) knows that the statement is false or misleading in a material particular; or
 - (ii) is reckless as to whether the statement is false or misleading in a material particular; or
- (b) obtain, or attempt to obtain, an amount by way of grant by means of a book, record or document that contains information that is false or misleading in a material particular, where the person:

SCHEDULE—continued

- (i) knows that the book, record or document, as the case requires, contains information that is false or misleading in a material particular; or
- (ii) is reckless as to whether the book, record or document, as the case requires, contains information that is false or misleading in a material particular; or
- (c) make to the Commission, or to a person having duties or functions under this Act, a statement that is false or misleading in a material particular, where the first-mentioned person:
 - (i) knows that the statement is false or misleading in a material particular; or
 - (ii) is reckless as to whether the statement is false or misleading in a material particular.”.

57. Paragraph 39(2)(b):

After “the knowledge” insert “or recklessness”.

58. Paragraph 39(2)(b):

After “be knowledge” insert “or recklessness, as the case requires,”.

PART 14—CHANGE IN OWNERSHIP OF BUSINESS ETC.

59. Subsection 19(1):

Omit “the Commission is satisfied that”.

60. Paragraph 19(1)(b):

Omit “, in the opinion of the Commission, is substantially”, substitute “is to any extent”.

61. Subsection 19(1):

Omit “the Commission may”, substitute “then, unless the Commission grants a special exemption from this section, the Commission must”.

62. Paragraphs 19(1)(c) to (f)(inclusive):

Omit “or” (last occurring), substitute “and”.

63. Subsection 19(2):

Omit “the Commission is satisfied”.

64. Subsection 19(2):

Omit “that” (first occurring).

65. Subsection 19(3):

Omit “the Commission is satisfied”.

SCHEDULE—continued

66. Subsection 19(3):

Omit “that” (first occurring).

67. Section 19:

Add at the end:

“Note: See section 19A for decision-making principles.”.

68. After section 19:

Insert:

Decision-making principles—section 19

Principles

“19A.(1) The Commission may formulate written principles (**‘decision-making principles’**) to be complied with by the Commission in making decisions under section 19.

Compliance with principles

“(2) In making a decision under section 19, the Commission must comply with any relevant decision-making principles.

Disallowable instruments

“(3) Decision-making principles are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901.*”.

NOTE ABOUT SECTION HEADING

1. On the commencement of the amendments of section 11E of the *Export Market Development Grants Act 1974* made by this Act, the heading to that section is altered by omitting “**or eligible tourism services**” and substituting “**, eligible tourism services or designated tourism services**”.

