

EXPORT MARKET DEVELOPMENT GRANTS ACT 1974

No. 154 of 1974

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EXPORT MARKET DEVELOPMENT GRANTS ACT 1974

No. 154 of 1974

An Act relating to Grants for the purpose of providing Incentives for the Development of Export Markets.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

- Short title. 1. This Act may be cited as the *Export Market Development Grants Act 1974*.¹
- Commence-
ment. 2. This Act shall be deemed to have come into operation on 1 July 1974.
- Interpret-
ation. 3. (1) In this Act, unless the contrary intention appears—
“authority or association” means—
 (a) an authority constituted by a law of Australia or of a State or internal Territory;
 (b) a co-operative association; or
 (c) any other body or association, corporate or unincorporate, representing the interests of an industry or of a substantial part of an industry,
 that has the function of promoting any of the activities referred to in paragraphs 4 (1) (a), (b), (c) and (d);
“Board” means the Board established by this Act;
“claim” means a claim under section 13, and “claimant” has a corresponding meaning;
“company” includes all bodies and associations, corporate or unincorporate, but does not include partnerships;
“disposal” includes sale, grant, assignment or supply, and “disposed of” has a corresponding meaning;
“eligible expenditure” has the meaning given by section 4;
“eligible goods” has the meaning given by section 5;
“export” means export from Australia, but does not include export by way of gift, or the taking or sending of goods out of Australia with the intention that the goods will at some later time be brought or sent back to Australia to remain permanently in Australia;

- “export earnings” has the meaning given by section 6;
- “Government sponsored promotion” means the promotion of any of the activities referred to in paragraphs 4 (1) (a), (b), (c) and (d) by means of—
- (a) the doing of an act outside Australia;
 - (b) the export of a publication; or
 - (c) the production and issue, outside Australia, of a supplement to a newspaper or periodical that is produced and distributed outside Australia,
- being an act, publication or supplement that is organized or sponsored by the Department of Overseas Trade;
- “grant” means a grant under this Act;
- “grant entitlement” has the meaning given by section 15;
- “grant year” means the year commencing on 1 July 1974 or any of the 4 next succeeding years;
- “group of corporations” has the meaning given by section 10;
- “industrial property rights” means rights in relation to inventions or trade marks, or copyright in relation to works, designs and other things, being—
- (a) inventions, works, designs or things that have, to a substantial extent, resulted from research or work performed in Australia; or
 - (b) trade marks that have been used commercially in Australia and were not, before that use, used commercially in any other country;
- “know-how” means scientific or technological knowledge or information in relation to industrial operations, and includes drawings, models or other material things, or services, supplied for the purpose of enabling or facilitating the use or enjoyment of such knowledge or information or of industrial property rights;
- “market” means—
- (a) a prescribed country, other than Australia; or
 - (b) a prescribed external Territory;
- “member” means a member of the Board;
- “new claimant” has the meaning given by section 8;
- “new market” has the meaning given by section 7;
- “person” includes a company or a partnership;
- “prescribed body” means an authority or association that is prescribed;
- “resident of Australia” and “resident outside Australia” have the respective meanings given by section 11;
- “sale for export” does not include sale to a resident of Australia, and “sells for export” has a corresponding meaning.

(2) For the purposes of this Act, where an act is done by an agent on behalf of his principal, it shall be deemed to be done by the principal and not by the agent.

(3) For the purposes of this Act, where a person sells goods, at a time when the goods are in Australia, to a buyer resident outside Australia and the goods are later exported by the buyer, the goods shall be deemed to be exported by the first-mentioned person.

Eligible
expenditure.

4. (1) Subject to the succeeding provisions of this section, a reference in this Act to eligible expenditure is a reference to expenditure incurred primarily and principally for the purpose of creating or seeking opportunities, or creating or increasing demand, for—

- (a) the sale for export, or export and sale, of eligible goods that have been manufactured, produced, assembled, processed or packed, or graded and sorted, in Australia;
- (b) the sale, outside Australia, of eligible goods that have been manufactured, produced or assembled outside Australia (other than goods referred to in paragraph (a));
- (c) the supply, for reward, in the course of carrying on business in Australia, to persons resident outside Australia, of services (not including know-how, but including technical advice, training or assistance other than know-how) outside Australia; or
- (d) the disposal, for reward, in the course of carrying on business in Australia, to persons resident outside Australia, for use and enjoyment outside Australia, of industrial property rights or of know-how that has, to a substantial extent, resulted from research or other work performed in Australia,

but does not include so much of any expenditure incurred by a person as—

- (e) has been, or is to be, paid or reimbursed to him by another person or by the Government of Australia or of a State; or
- (f) is incurred in connexion with services, or the doing of any thing, for which he has been, or is to be, paid by another person or by the Government of Australia or of a State.

(2) For the purposes of this section, “expenditure” means expenditure to the extent to which it is incurred by a claimant, or an association referred to in sub-section (3), by way of—

- (a) expenses of, contributions towards expenses of, or payments made to an agent for the purpose of—
 - (i) the carrying out of market research or the obtaining of market information; or
 - (ii) advertising or other means of securing publicity or soliciting business,

not being amounts paid or payable to—

- (iii) a person ordinarily employed in Australia by the claimant or an associated company, or by the association, as the case may be, in respect of services performed by him in Australia or in the course of a visit from Australia to a place or places outside Australia;
 - (iv) a director of the claimant, where the claimant is a company;
 - (v) a director of an associated company; or
 - (vi) an associated company carrying on business in Australia;
- (b) expenses (including costs of delivery) directly attributable to providing, without charge, samples or technical information to a person outside Australia;
 - (c) expenses directly attributable to the making of investigations and the preparation of information, designs, estimates or other material for the purpose of the submission by the claimant of a tender or quotation for the supply by the claimant of services or of eligible goods that are not of the same kind and specification as goods that are being regularly dealt with by the claimant;
 - (d) expenses directly attributable to the selection or designing of, or of materials for, packaging and labelling for use exclusively in connexion with the export of eligible goods; or
 - (e) expenses (whether by way of payment of fees or otherwise) directly attributable to obtaining, or seeking to obtain, under the law of a country outside Australia, the grant or registration of, or the extension of the term of, or of the period of registration of, any industrial property rights,

but not including—

- (f) expenditure of a capital nature, other than—
 - (i) expenses of the kind referred to in paragraph (d) or (e); or
 - (ii) expenditure incurred in relation to disposals of the kind referred to in paragraph (1) (d);
- (g) expenses, other than fares, in respect of travel, accommodation, sustenance or entertainment in respect of or in relation to a visit from Australia to a place or places outside Australia by the claimant or by a prescribed agent of the claimant or of the association ordinarily employed or carrying out duties in Australia;
- (h) except to the extent provided in paragraph (c), expenses of the preparation or submission of tenders or quotations;
- (i) expenses of advertising in Australia in relation to the supply of services outside Australia;

- (j) commission or other remuneration, paid or payable otherwise than by way of salary, retainer or fee, in respect of sales or other disposals;
- (k) remuneration by way of salary, retainer or fee, to the extent that the remuneration is determined, directly or indirectly, by reference to the extent or value of sales or other disposals made, or business obtained by, the person to whom the remuneration is paid or payable;
- (l) discounts or credits, or amounts in the nature of discounts or credits, allowed or paid in relation to sales or other disposals; or
- (m) amounts paid or payable by way of tax, levy or other contribution under a law of Australia or of a State or internal Territory or to a prescribed body.

(3) Where—

- (a) a claimant has paid any moneys to an association, other than a prescribed body, as the whole or part of a subscription, contribution or levy; and
- (b) the Board is satisfied that those moneys have been or will be applied by the association by way of eligible expenditure,

those moneys shall, for the purposes of this section, be deemed to be an amount of eligible expenditure incurred by the claimant at the time when they were so paid.

(4) Where 2 or more persons who are prescribed agents of a claimant and are relatives of each other travel outside Australia at the same time, the eligible expenditure of the claimant does not include—

- (a) if the claimant himself is one of those persons—the fares of any other of those persons who is not a permanent employee of the claimant;
- (b) if the claimant himself is not one of those persons, but those persons include a permanent employee of the claimant—the fares of any of those persons who is not a permanent employee of the claimant; and
- (c) if none of those persons is either the claimant himself or a permanent employee of the claimant—the fares of any of those persons, other than such one of them as the claimant nominates by notice in writing to the Board,

but this sub-section does not operate to exclude the fares of a person if the Board is satisfied that there are special circumstances by reason of which those fares should not be so excluded.

(5) Where the amount of any expenditure constituting or forming part of any eligible expenditure exceeds the amount that, in the opinion

of the Board, would reasonably be expected to be payable, in the ordinary course of business, for the purpose or purposes for which the expenditure was incurred, the Board may, for the purposes of this section, treat the expenditure as being reduced by the amount of the excess.

(6) Where, in connexion with any eligible expenditure incurred by a claimant, there is or has been an agreement or arrangement between the claimant and another person or persons—

- (a) in accordance with which the consideration received or receivable by the claimant in respect of the disposal of any goods, services, industrial property rights or know-how was or is greater than it would have been if that expenditure had not been incurred; and
- (b) a purpose of which was, or an effect of which would, but for this sub-section, be, to enable the claimant to obtain a grant in respect of expenditure for which he will be compensated by the increased consideration,

the expenditure shall, for the purposes of this section, be deemed to have been reimbursed to the claimant by another person to the extent of, or, where the case so requires, to the extent of an amount determined by the Board to be a reasonable estimate of, the amount by which the consideration referred to in paragraph (a) was or is greater, by reason of that expenditure, than it would otherwise have been.

(7) Where an amount paid or payable during a grant year by a claimant that is a member of a group of corporations to, or to a director or employee of, another member of the group would, but for subparagraph (iii), (v) or (vi) of paragraph (a) of sub-section (2), be eligible expenditure incurred by the claimant, the Board may, if it is satisfied that there are special circumstances to justify its so doing, treat the whole or part of the amount as eligible expenditure incurred by the claimant during that year.

(8) In this section, unless the contrary intention appears—

“associated company”, in relation to a claimant, means a company that is, at any time during the relevant grant year, a company—

- (a) the operations of which are, or are able to be, controlled, either directly or indirectly, by the claimant;
- (b) which controls, or is able to control, either directly or indirectly, the operations of the claimant; or
- (c) the operations of which are controlled, or are able to be controlled, either directly or indirectly, by a person who controls or is able to control, or persons who control or are able to control, either directly or indirectly, the operations of the claimant;

“permanent employee”, in relation to a claimant, means a person who has been a full-time employee of the claimant for a continuous period of not less than 5 years immediately preceding the time in relation to which the expression is used;

“prescribed agent” means—

- (a) in relation to a claimant other than a company, except where paragraph (c) applies—the claimant himself or an employee of the claimant;
- (b) in relation to a claimant being a company, or in relation to an association referred to in sub-section (3)—a director, member of the governing body or employee of the company or association; or
- (c) in relation to a claimant being a partnership—any partner or employee of the partnership and, where any of the partners is a company, a director or employee of that company;

“relative”, in relation to a person, means—

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that person or of his or her spouse; or
- (b) the spouse of that person or of any other person specified in paragraph (a).

Eligible goods.

5. (1) A reference in this Act to eligible goods is a reference to—

- (a) goods manufactured, produced, assembled, processed or packed, or graded and sorted, in Australia, where—
 - (i) not more than 50 per centum of the value of the goods is attributable to materials not of Australian origin; or
 - (ii) more than 50 per centum of the value of the goods is so attributable, but the Board is satisfied that the goods should be treated as substantially of Australian origin; or
- (b) goods manufactured, produced or assembled outside Australia (other than goods to which paragraph (a) applies), where—
 - (i) not less than 75 per centum of the value of all the materials from which the goods are manufactured, produced or assembled is attributable to materials that are goods to which paragraph (a) applies; or
 - (ii) less than 75 per centum of the value of the materials from which the goods are manufactured, produced or assembled is so attributable, but the Board is satisfied that the goods should be treated as substantially of Australian origin.

(2) A reference in sub-section (1) to materials includes a reference to parts.

6. (1) In this section, “qualifying goods” means goods to which paragraph 5 (1) (a) applies. Export earnings.

(2) Subject to this section, a reference in this Act to the export earnings of a person, in relation to a grant year, is a reference to the sum of—

- (a) in respect of qualifying goods sold in Australia by that person at any time and exported by him during that year—so much of the consideration received or receivable by that person in respect of the sale and export as is attributable to—
 - (i) the free on board value of the goods;
 - (ii) the packaging of the goods; and
 - (iii) export payments insurance premiums in respect of the goods;
- (b) in respect of qualifying goods exported by that person at any time and sold outside Australia by him during that year—an amount equal to the amount that would have been calculated in respect of the goods under paragraph (a) if they had been sold in Australia;
- (c) the amount or value of the consideration received by that person during that year for the supply by that person at any time of services (not including know-how, but including technical advice, training or assistance other than know-how) outside Australia less, in the case of any service to which section 9 applies, so much of the consideration as accrues to another person; and
- (d) the amount or value of the consideration received by that person during that year for the disposal by that person at any time in the course of carrying on business in Australia, to persons resident outside Australia, for use and enjoyment outside Australia, of industrial property rights or of know-how that has, to a substantial extent, resulted from research or other work performed in Australia.

(3) For the purposes of sub-section (2), where—

- (a) the Board is satisfied that goods are sold in Australia by a person (in this sub-section referred to as “the seller”) to another person (in this sub-section referred to as “the buyer”) in accordance with an arrangement in pursuance of which—
 - (i) the seller reimburses the buyer for any expenditure incurred by the buyer that, but for the reimbursement, would be eligible expenditure incurred by the buyer;
 - (ii) the buyer receives from the seller any other consideration in respect of or in connexion with the export of the goods; or
 - (iii) the price of the goods is less than the price that would reasonably be expected to be payable in the ordinary course of business; and
- (b) the buyer sells for export, or exports and sells, the goods,

the Board may treat the goods as having been exported by the seller and treat the consideration received or receivable by the buyer from any person other than the seller in respect of the sale for export or the export and sale by the buyer of the goods as being consideration received or receivable by the seller, and not by the buyer.

(4) For the purposes of sub-section (2), where the Board is satisfied that a prescribed body arranges the sale for export or the export and sale of goods that, immediately before the sale, were owned by another person, the Board may treat the consideration received or receivable by the prescribed body in respect of the sale for export or the export and sale of the goods as if the goods were owned by it immediately before the sale.

(5) For the purposes of paragraph (2) (a)—

(a) the date of export of goods exported under a bill of lading shall be deemed to be—

(i) the date shown on the bill of lading; or

(ii) the date on which they are received for shipment at the port or airport of export,

whichever is the earlier;

(b) the date of export of goods sold as stores for use on ships or aircraft that are intended to leave Australia shall be deemed to be the date of the sale; and

(c) the date of export of any other goods shall be deemed to be the date on which they are received for shipment at the port or airport of export.

(6) For the purposes of this section, where a person has received or is entitled to receive an amount under a policy of insurance or otherwise in respect of loss, destruction or damage that has occurred in respect of goods owned by him after their export from Australia—

(a) in the case of loss or destruction—that person shall be deemed to have sold those goods, at the time of the loss or destruction, for a consideration equal to that amount; and

(b) in the case of damage—

(i) if that person has sold the goods for a consideration—the consideration shall be deemed to be increased by that amount; and

(ii) if that person ceased to be the owner of the goods in any other manner—he shall be deemed to have sold the goods at the time when he so ceased, for a consideration equal to that amount.

7. (1) Where, during the period of 3 financial years immediately before a grant year, a claimant has not incurred in relation to a market eligible expenditure exceeding a total amount of \$5,000, that market shall, in respect of that grant year and the next 2 succeeding grant years, be treated as a new market in relation to that claimant. New markets.

(2) Where a particular market has been treated as a new market in relation to a particular claimant in respect of a period of 3 grant years, it shall not be so treated in respect of any other grant year.

(3) In this section—

- (a) a reference to a financial year includes a reference to a financial year that is a grant year;
- (b) a reference to a market, in relation to a period before a grant year, is a reference to the territory comprised in a country or external Territory that is prescribed as a market for the purposes of the application of this Act in relation to that grant year; and
- (c) a reference to eligible expenditure, in relation to a time before 1 July 1974, is a reference to expenditure that would have been eligible expenditure if this Act had been in force at that time.

8. (1) Where a claimant did not incur eligible expenditure in respect of each of the first 5 of the 7 financial years immediately preceding a grant year, the claimant is entitled to be treated as a new claimant in relation to that grant year. New claimants.

(2) In this section—

- (a) a reference to a financial year includes a reference to a financial year that is a grant year; and
- (b) a reference to eligible expenditure, in relation to a time before 1 July 1974, is a reference to expenditure that would have been eligible expenditure if this Act had been in force at that time.

9. Where, in pursuance of an arrangement with a person carrying on business in Australia, a service is supplied outside Australia by a person carrying on business outside Australia and— Supply of services outside Australia.

- (a) the arrangement has the effect that 50 per centum or more of the consideration for the service accrues to the first-mentioned person; or
- (b) the arrangement has the effect that a substantial proportion of that consideration accrues to the first-mentioned person and the Board is satisfied that this section should apply in relation to that service,

that service shall, for the purposes of this Act, be regarded as a service supplied by the first-mentioned person.

Groups of
corporations.

10. (1) Where 2 or more corporations are related to each other at any time during a grant year, those corporations shall be treated as members of a group of corporations in relation to that year.

(2) For the purposes of this section—

(a) where a corporation is a subsidiary of another corporation, the first-mentioned corporation and that other corporation shall be taken to be related to each other; and

(b) where 2 or more corporations are each subsidiaries of another corporation, those corporations and that other corporation shall be taken to be related to each other.

(3) For the purposes of this section, but subject to sub-sections (4) and (5), a corporation shall be deemed to be a subsidiary of another corporation if—

(a) that other corporation holds all the issued share capital of the first-mentioned corporation; or

(b) the first-mentioned corporation is a subsidiary of a corporation that is that other corporation's subsidiary.

(4) In determining whether one corporation is a subsidiary of another corporation for the purposes of this section, any share held—

(a) by a person as a nominee of that other corporation; or

(b) by, or by a nominee of, a subsidiary of that other corporation, shall be treated as held by that other corporation.

(5) Where the Board is satisfied that an act or thing (including the making of an agreement or arrangement, the transfer or issue of share capital or the forming of a corporation) has been done for a purpose that includes, or purposes that include, the purpose of preventing a corporation from being treated as a subsidiary of another corporation with a view to obtaining, or affecting the amount of, a grant, the Board may treat the first-mentioned corporation as being a subsidiary of the other corporation.

Residents of
Australia.

11. A reference in this Act to a resident of Australia is a reference to—

(a) a person, other than a company or a partnership, who resides in Australia;

(b) a person, other than a company or a partnership, whose domicile is in Australia, unless the Board is satisfied that his permanent place of abode is outside Australia;

(c) a company which is incorporated in Australia, or which, not being incorporated in Australia, carries on business in Australia and has either its central management and control in Australia or its voting power controlled by shareholders who are residents of Australia; or

(d) a partnership which carries on business in Australia,

and a reference to a person resident outside Australia shall be construed accordingly.

PART II—GRANTS

12. (1) The Board shall consider every claim duly made and determine whether the claimant has a grant entitlement and, if so, the amount of that grant entitlement. Grants.

(2) Where the Board determines that a claimant has a grant entitlement, there is payable to the claimant a grant equal to the amount of the grant entitlement so determined.

13. (1) A person desiring to obtain a grant shall submit a claim to the Board. Claims for grants.

(2) Subject to the regulations, a claim shall be submitted in the form and manner approved by the Board.

(3) A claim shall be deemed not to have been submitted until it has been received by the Board or has been received on behalf of the Board by a member of the staff assisting the Board or by a person appointed by the Board to receive claims under this Act.

(4) The Board may refuse to consider a claim unless the claimant supplies such further information, or makes available to the Board such books, records or documents, as the Board specifies, being information, books, records or documents that the Board requires for the performance of its functions under this Act.

14. (1) Grants are not payable to—

- (a) a State;
- (b) an authority or association, other than a prescribed body; or
- (c) a corporation constituted for a public purpose by or under a law of Australia or of a State or Territory, other than —
 - (i) a corporation that is prescribed for the purposes of this section; or
 - (ii) a prescribed body.

Persons not eligible for grants.

(2) A grant is not payable to a person in respect of eligible expenditure incurred by that person at a time when that person was not a resident of Australia.

15. Subject to this Act, the grant entitlement of a claimant in relation to a grant year is an amount equal to the sum of— Grant entitlements.

- (a) 85 per centum of the eligible expenditure incurred by the claimant during that year in relation to Government sponsored promotions;

- (b) 85 per centum of the sum of any other eligible expenditure, being—
 - (i) eligible expenditure incurred by the claimant during that year that related to new markets or, in the opinion of the Board, related primarily and principally to new markets; and
 - (ii) the eligible expenditure deemed, by virtue of sub-section 4 (3), to have been incurred by the claimant during that year; and
- (c) an amount equal to 60 per centum of any other eligible expenditure incurred by the claimant during that year.

Limit of grants.

16. (1) In this section—

“Government entitlement” in relation to a claimant, in relation to a grant year, means the amount calculated in relation to that claimant in relation to that year under paragraph 15 (a);

“non-Government entitlement”, in relation to a claimant, in relation to a grant year, means—

- (a) in the case of a new claimant or of a prescribed body that does not have the function of performing any of the activities referred to in paragraphs 4 (1) (a), (b), (c) and (d)—the sum of the amounts calculated in relation to the claimant in relation to that year under paragraphs 15 (b) and (c); and
- (b) in any other case—so much of the sum of the amounts calculated in relation to the claimant in relation to that year under paragraphs 15 (b) and (c) as does not exceed 10 per centum of the export earnings of the claimant in respect of that year.

(2) The amount of the grant entitlement, in relation to a grant year, of a claimant, other than a claimant referred to in sub-section (3), shall not exceed the sum of—

- (a) so much of the non-Government entitlement of the claimant for that year as does not exceed \$100,000; and
- (b) so much of the Government entitlement of the claimant for that year as, together with the amount calculated under paragraph (a), does not exceed \$125,000.

(3) The aggregate amount of the grant entitlement, in relation to a grant year, of all the claimants that are, in relation to that year, to be treated, in accordance with section 10, as members of a group of corporations shall not exceed the sum of—

- (a) so much of the amount ascertained by adding together the non-Government entitlement of each of the claimants for that year as does not exceed \$100,000; and

- (b) so much of the amount ascertained by adding together the Government entitlement of each of the claimants for that year as, together with the amount arrived at in accordance with paragraph (a), does not exceed \$125,000.

(4) Where the aggregate amount of the grant entitlement of the members of a group of corporations would, but for sub-section (3), exceed the limit prescribed by that sub-section, the Board shall reduce the grant entitlement of each member of the group in such manner as it considers appropriate, having regard to the provisions of sub-section (2).

17. Where—

- (a) the Board is satisfied that, at any time during a grant year, a corporation becomes, or ceases to be, a member of a group of corporations; and
- (b) the corporation submits a claim in relation to that year,

the grant entitlement in respect of the activities of the corporation before, and the activities of the corporation after, that time shall, if the Board thinks fit, be calculated as if they were the activities of 2 different corporations, and this Act has effect accordingly, but nothing in this section affects the operation of sections 7 and 8 in relation to the corporation in respect of that grant year or any other grant year.

18. Where, upon application by a claimant, the Board is satisfied that, by reason of the fact that—

- (a) the whole or part of the export earnings resulting from eligible expenditure incurred by the claimant has not accrued, or will not accrue, to the claimant in the same period as the period during which the expenditure was incurred; or
- (b) the export earnings of the claimant in respect of a period have been, or will be, reduced as a result of abnormal trading conditions, or other extraordinary circumstances, beyond the claimant's control,

the Board may, if it thinks fit, distribute the eligible expenditure or the export earnings, or both, of the claimant between any 2 or more grant years in such manner as it considers appropriate.

19. Where the Board is satisfied that—

- (a) at any time, including a time before 1 July 1974, a business or undertaking is or was carried on by a person or persons; and
- (b) at a later time, by reason of the formation or termination of a partnership or corporation or a change in the membership of a partnership, the same business or undertaking or a business or undertaking that, in the opinion of the Board, is or was substantially the same, is or was carried on by a different person or different persons,

Changes in membership of groups.

Adjustments in certain circumstances.

Change in ownership of business, &c.

the Board may treat the last-mentioned person or persons, and not the first-mentioned person or persons, as having carried on the first-mentioned business or undertaking at the earlier time.

- Trust estates. **20.** Where any eligible expenditure is incurred by, or any export earnings accrue to, the trustee of a trust estate, the Board may treat so much of that expenditure or of those earnings as, in the opinion of the Board, is reasonable, having regard to—
- (a) the operation of this Act in relation to persons other than trustees and beneficiaries in trust estates; and
 - (b) the respective interests of the beneficiaries in the trust estate, as having been incurred by, or having accrued to, a beneficiary.

PART III—ADMINISTRATION

Establishment of Board. **21.** For the purposes of this Act, there is hereby established a Board by the name of the Export Development Grants Board.

Policies and practices of Board. **22.** (1) Subject to this section, the Minister may give directions to the Board with respect to the policies and practices to be followed by the Board, and the Board shall comply with any such direction that is in force.

(2) A direction of the Minister under this section shall not operate so as to affect prejudicially a claim in relation to a grant year that commenced before the date on which the direction was made.

(3) Nothing in this section authorizes the Minister to give a direction to the Board in relation to a particular person or a particular claim.

(4) A decision of the Board is not invalidated, and shall not be called in question, upon the ground that the Board has limited the exercise of its discretion in a particular case by reference to any general policy or practice adopted or announced by the Board.

Membership of Board. **23.** (1) The Board shall consist of 3 members, namely—

- (a) the Chairman, who shall be a full-time member; and
- (b) 2 other members, who shall be part-time members.

(2) The members shall be appointed by the Governor-General.

(3) A person shall not be appointed as a member unless he appears to the Governor-General to be qualified for appointment by virtue of his knowledge of, or experience in, commerce or industry.

(4) The performance of the functions or the exercise of the powers of the Board is not affected by reason only of there being a vacancy or vacancies in the membership of the Board.

24. (1) A member shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment. Term of office.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Chairman and a person shall not be appointed or re-appointed as the Chairman for a period that extends beyond the date on which he will attain the age of 65 years.

25. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed. Remuneration and allowances.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

26. The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines. Leave of absence.

27. A member may resign his office by writing signed by him and delivered to the Governor-General. Resignation.

28. (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity. Termination of office.

(2) If a member—

(a) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) without reasonable excuse, fails to comply with his obligations under section 31;

(c) being the Chairman—

(i) continues, for more than 14 days after the date of his appointment, to be a director of a company or becomes, after his appointment, a director of a company; or

(ii) engages in paid employment outside the duties of his office,

except with the approval of the Minister;

(d) being the Chairman, is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months; or

(e) being a part-time member, is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Board,

the Governor-General shall terminate his appointment.

Acting
members.

- 29.** (1) The Minister may appoint a person to act as the Chairman—
- (a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or, for any reason, is unable to perform the functions of his office.
- (2) The Minister may appoint a person to act as a part-time member—
- (a) during a vacancy in the office of a part-time member, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a part-time member is absent from duty or from Australia or, for any other reason, is unable to perform the functions of his office.
- (3) A person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (4) The Minister may—
- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and
 - (b) at any time terminate such an appointment.
- (5) Where a person is acting in an office in accordance with paragraph (1) (b) or (2) (b), and the office becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (6) The appointment of a person under this section ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.
- (7) While the appointment of a person under this section remains in force, he has, and may exercise, all the powers, and shall perform all the functions, of the person in whose office he is acting.
- (8) At any time when a person is acting in the place of a member by virtue of an appointment under this section he shall be deemed to be a member for the purposes of sections 30 and 31.
- (9) The validity of anything done by a person appointed under this section shall not be called in question on the ground that the occasion for his appointment had not arisen or that his appointment had ceased to have effect.

Meetings.

- 30.** (1) The Board shall hold such meetings as are necessary for the performance of its functions.

(2) The meetings shall be convened by the Chairman or by the Minister.

(3) At a meeting, 2 members constitute a quorum.

(4) The Chairman shall preside at all meetings at which he is present.

(5) If the Chairman is not present at a meeting, the members present shall elect one of their number to preside at the meeting.

(6) Questions arising at a meeting at which the Chairman is present shall be determined by a majority of the votes of the members present.

(7) If, at a meeting at which the Chairman is not present, the 2 members present are unable to agree on a question, the question shall be deferred to a meeting at which the Chairman is present.

(8) At a meeting at which he is present, the Chairman has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) In relation to a time when a person is acting as Chairman, references in this section to the Chairman shall be read as references to that person.

31. (1) A member shall, as soon as practicable, give written notice to the Minister and to each other member of all direct and indirect pecuniary interests that he has or acquires in any business carried on in Australia or in any company or partnership carrying on such business.

Disclosure of interest by members.

(2) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of more than 25 persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(3) A disclosure under sub-section (2) shall be recorded in the minutes of the Board, and the member—

- (a) shall not take part after the disclosure in any deliberation or decision of the Board with respect to that matter; and
- (b) for the purposes of paragraph 29 (1) (b) or 29 (2) (b), whichever is applicable, shall be deemed to be unable to perform the functions of his office during any such deliberation or decision.

32. It is the duty of the Chairman to ensure the efficient and orderly conduct of the business of the Board, and for that purpose the Chairman—

Duties of Chairman.

- (a) shall make, or cause to be made, such inquiries into claims or into any other matter relevant to the operation of this Act as he thinks necessary;

- (b) may make, or cause to be made, to the Board such reports in relation to claims as he thinks fit; and
- (c) may determine the form of the records to be kept by the Board and the procedure to be adopted at meetings of the Board.

Delegation.

33. (1) The Board may, by resolution, delegate to the Chairman or to a member of the staff assisting the Board all or any of its powers and functions under this Act (except this power of 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 by resolution of the Board and does not prevent the exercise of a power or the performance of a function by the Board.

(4) A delegation, or the revocation of a delegation, under this section shall be notified to the Minister by the Chairman.

(5) Section 34A of the *Acts Interpretation Act* 1901-1973 applies in relation to a delegation under this section as if the Board were a person.

(6) A delegation under this section continues in force notwithstanding a change in the membership of the Board.

Super-annuation.

34. (1) For the purposes of the *Superannuation Act* 1922-1974, the Chairman shall be taken to be a person who is required, by the terms of his appointment, to give the whole of his time to the duties of his office.

(2) For the purposes of that Act, the termination under sub-section 28 (1) of the appointment of the Chairman by reason of his physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

(3) Nothing in this Act authorizes the provision of superannuation benefits to the Chairman otherwise than under that Act.

Officers' Rights Declaration Act.

35. Where the Chairman was, immediately before his appointment, an officer of the Public Service or a person to whom the *Officers' Rights Declaration Act* 1928-1973 applied—

- (a) he retains his existing and accruing rights;
- (b) for the purposes of determining those rights, his service under this Act shall be taken into account as if it were service in the Public Service; and
- (c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.

Staff.

36. The staff necessary to assist the Board shall be persons appointed or employed under the *Public Service Act* 1922-1974.

37. (1) This section applies to every person who is or has been a Secretary member of the Board or of the staff assisting the Board.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of a person acquired by him by reason of his office as a member of the Board or as a member of the staff assisting the Board; or
- (b) produce to any person an application or other document furnished by a person for the purposes of obtaining a grant.

Penalty: \$500 or imprisonment for 6 months.

(3) Sub-section (2) does not apply to the disclosure of information, or the production of a document, to the Minister, or to the Secretary to the Department of Overseas Trade or an officer of that Department designated by the Secretary.

(4) Sub-section (2) does not prevent the Board from making public at any time—

- (a) the names of persons to whom the Board has authorized payments of grants and the respective amounts of the grants; and
- (b) any information of a statistical nature.

(5) A person to whom this section applies shall not be required to divulge or communicate to a court any information referred to in sub-section (2) or to produce in a court any document referred to in that sub-section, except when it is necessary to do so for the purposes of, or of a prosecution under or arising out of, this Act.

(6) A person to whom information is communicated under sub-section (3) and an employee or other person under his control are, in respect of that information, entitled to rights and privileges, and subject to obligations and liabilities, under sub-sections (2) and (5) as if they were persons referred to in sub-section (1).

(7) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes to permit access to, and “production” has a corresponding meaning.

PART IV—MISCELLANEOUS

Abuses of
Act.

38. Where the Board is satisfied that—

- (a) an act or thing (including the making of an agreement, arrangement or payment, the forming of a corporation or the allocation of income or expenditure as between different corporations or different years) has been done with a view to the obtaining of, or to affecting the amount of, a grant to a person; and
- (b) the act or thing is of such a nature that it constitutes an attempt to abuse this Act,

the Board may, for the purposes of this Act, disregard any expenditure incurred in relation to the doing of that act or thing or make such adjustment to the amount of the eligible expenditure or the export earnings of the person as it thinks necessary to prevent the abuse.

Offences.

39. (1) A person shall not, in or in connexion with a claim, knowingly make to the Board, or to a person having duties or functions for the purposes of this Act, a statement, whether oral or in writing, or present to the Board or to such a person a book, record or document, that is false or misleading.

Penalty: \$10,000 or imprisonment for 6 months.

(2) For the purposes of the application of this section in relation to a corporation, but without prejudice to the liability of any person other than the corporation—

- (a) a statement made, or a book, record or document presented, by a person acting on behalf of the corporation shall be deemed to be made or presented by the corporation; and
- (b) the knowledge of any person employed by, or concerned in the management of, the corporation shall be deemed to be knowledge of the corporation.

Recovery
of over-
payments.

40. (1) Where any amount of grant to a person has been paid in consequence of the making of a statement, or the presentation of a book, record or document, by or on behalf of the person that was, whether or not to the knowledge of the person, false or misleading, an amount equal to the amount so paid is recoverable from the person by Australia in a court of competent jurisdiction as a debt due to Australia.

(2) For the purposes of sub-section (1), a certificate purporting to be signed by the Chairman, or by a person for the time being acting in the office of Chairman, and stating that an amount of grant has been paid in consequence of the making of a statement, or the presentation of a book, record or document, is, upon mere production, receivable as *prima facie* evidence of that fact.

41. (1) The Board shall, as soon as practicable after the end of each financial year, submit to the Minister a report on the operation of this Act, with particular reference to its operation during that year. Reports.

(2) A report under sub-section (1)—

- (a) may include information or comments concerning the effect of this Act;
- (b) shall include statements of the names of claimants who have received grants and the respective amounts of the grants; and
- (c) shall include statements of the names of persons who have been convicted of offences against this Act and of particulars of those offences.

(3) The report shall set out particulars of any direction given by the Minister to the Board during the year to which the report relates.

(4) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

(5) The first report under this section shall be submitted as soon as practicable after 30 June 1975.

42. Payments of grants shall be made out of moneys appropriated by the Parliament for the purpose. Grant moneys to be appropriated.

43. 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, requiring the verification by statutory declaration of claims made under, or documents, books or records supplied for the purposes of, this Act. Regulations.

NOTE

1. Act No. 154, 1974; assented to 17 December 1974.