



Export Market Development Grants Amendment Act 1988

No. 90 of 1988

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

[Assented to 14 November 1988]

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

Short title etc.

1. (1) This Act may be cited as the *Export Market Development Grants Amendment Act 1988*.

(2) In this Act, "Principal Act" means the *Export Market Development Grants Act 1974*¹.

Commencement

2. This Act commences on 1 July 1988.

Interpretation

3. Section 3 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions:

“‘affiliated company’, in relation to a body corporate (in this definition called the ‘relevant body corporate’) in relation to a grant year, means a body corporate:

- (a) that is at any time in the grant year a wholly-owned subsidiary of the relevant body corporate;
- (b) of which the relevant body corporate is at any time in the grant year a wholly-owned subsidiary; or
- (c) that is at any time in the grant year a wholly-owned subsidiary of a body corporate of which the relevant body corporate is also at that time a wholly-owned subsidiary;

‘subsidiary’ has the meaning given by subsection (11);

‘wholly-owned subsidiary’, in relation to a body corporate (in this definition called the ‘holding body’), means a body corporate:

- (a) that is a subsidiary of the holding body;
- (b) none of whose members is a person other than:
 - (i) the holding body;
 - (ii) a body corporate that is, by virtue of any other application or applications of this definition, a wholly-owned subsidiary of the holding body; or
 - (iii) a nominee of the holding body or of a body of a kind referred to in subparagraph (ii); and
- (c) no share in which is beneficially owned by a person other than:
 - (i) the holding body; or
 - (ii) a body of a kind referred to in subparagraph (b) (ii);”;

(b) by adding at the end the following subsection:

“(11) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined under the *Companies Act 1981*.”.

Eligible expenditure

4. Section 4 of the Principal Act is amended:

(a) by inserting after paragraph (2) (d) the following paragraph:

“(da) expenses that, in the opinion of the Commission, are directly attributable to foreign language training:

- (i) for the claimant or a director, partner or employee of the claimant; and
 - (ii) that, in the opinion of the Commission, will assist the claimant to carry out activities falling within paragraphs (1) (a) to (j) (inclusive);
other than amounts paid or payable:
 - (iii) as remuneration (whether by way of salary or otherwise) to the person undertaking the training; or
 - (iv) to a relative of the person undertaking the training;”;
- (b) by inserting after subparagraph (2) (g) (i) the following subparagraph:
- “(ii) expenses in respect of accommodation or sustenance in relation to foreign language training falling within paragraph (da);”.

5. After section 5 of the Principal Act the following section is inserted:

Expenditure in relation to New Zealand trade not eligible etc.

“6. (1) Expenditure that relates, directly or indirectly, to trade with New Zealand is not eligible expenditure.

“(2) Consideration that relates, directly or indirectly, to trade with New Zealand is not export earnings.

“(3) This section has effect in spite of any other provision of this Act.”.

Claims for grants

6. Section 13 of the Principal Act is amended:

(a) by inserting after subsection (2) the following subsection:

“(2AA) The claim shall, if the Commission requires, be accompanied by an export market plan, which includes such information as the Commission requires.”;

(b) by inserting in subsection (4) “in relation to a grant year” after “claim”;

(c) by inserting in subsection (4) “and, if the claimant is a body corporate that has an affiliated company in relation to the grant year, the affiliated company” after “the claimant”;

(d) by omitting from subsection (4) “further”.

Persons not eligible for grants

7. Section 14 of the Principal Act is amended by omitting subsection (4) and substituting the following subsections:

“(4) A grant is not payable to a person in respect of a particular grant year if:

(a) either of the following subparagraphs applies:

- (i) if the person is a body corporate that has an affiliated company in relation to the grant year and the affiliated company has made a claim in respect of the grant year—the aggregate of the export earnings in the grant year of the person, and the relevant export earnings in the grant year of every body corporate that was an affiliated company in relation to the grant year and has made a claim in respect of the grant year, exceeds \$20,000,000;
 - (ii) in any other case—the export earnings of the person in the grant year exceed \$20,000,000; or
- (b) the amount of eligible expenditure incurred by the person in the grant year does not exceed \$10,000.

“(5) In subsection (4):

‘relevant export earnings’, in relation to a body corporate that was an affiliated company in relation to another body corporate in relation to a grant year, means the export earnings of the first-mentioned body corporate while it was such an affiliated company.”.

Grant entitlements

8. Section 16 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “\$5,000” and substituting “\$10,000”;
- (b) by omitting from subparagraph (1) (b) (i) “\$200,000” and substituting “the ceiling amount”;
- (c) by omitting from subsection (2) “\$200,000” and substituting “the ceiling amount”;
- (d) by omitting from paragraph (2) (c) “50%” and substituting “40%”;
- (e) by omitting from paragraph (2) (d) “25%” and substituting “20%”;
- (f) by omitting from paragraph (2) (e) “12.5%” and substituting “10%”;
- (g) by omitting from paragraph (2) (f) “10%” and substituting “7.5%”;
- (h) by omitting from paragraph (2) (g) “7.5%” and substituting “5%”;
- (j) by adding at the end the following subsection:

“(4) In this section:

‘ceiling amount’, in relation to a grant year, means:

- (a) in the case of a claimant who has received, or is entitled to receive, grants in respect of less than 8 grant years preceding that particular grant year—\$200,000;
- (b) in the case of a claimant who has received, or is entitled to receive, grants in respect of 8 grant years preceding that particular grant year—\$150,000; or
- (c) in the case of a claimant who has received, or is entitled to receive, grants in respect of 9 or more grant years preceding that particular grant year—\$100,000.”.

Export Market Development Grants Amendment No. 90, 1988

9. Section 19 of the Principal Act is repealed and the following section is substituted:

Change in ownership of business etc.

“19. Where the Commission is satisfied that:

- (a) at any time, a particular business activity (in this section called the ‘relevant activity’) was carried on by a person (in this section called the ‘original owner’); and
- (b) at a later time (whether or not in the same grant year), because of the sale or other transfer of a business or part of a business, a change in the membership of the partnership that carried on the relevant activity, or any other business arrangement, the relevant activity, or a business activity that, in the opinion of the Commission, is substantially similar to the relevant activity, was carried on by a different person (in this section called the ‘new owner’);

the Commission may:

- (c) treat any eligible expenditure incurred by the original owner in relation to the relevant activity as having been incurred by the new owner;
- (d) treat any export earnings of the original owner in relation to the relevant activity as export earnings of the new owner; or
- (e) treat any grant or part of a grant paid or payable to the original owner in relation to the relevant activity as having been paid, or being payable, to the new owner.”.

Transitional provision

10. In spite of the amendments of sections 14 and 16 of the Principal Act made by this Act, those sections, as in force immediately before the commencement of this Act, continue to apply in relation to grant years before the grant year that commenced on 1 July 1988.

NOTE

- 1. No. 154, 1974, as amended. For previous amendments, see Nos. 36 and 192, 1978; Nos. 74 and 119, 1981; No. 157, 1982; No. 65, 1985; No. 110, 1985 (as amended by No. 187, 1985); No. 187, 1985 (as amended by No. 141, 1987); No. 168, 1986; and No. 141, 1987.

[*Minister's second reading speech made in—
House of Representatives on 25 May 1988
Senate on 25 August 1988*]