



# Export Market Development Grants Legislation Amendment Act 1993

**No. 108 of 1993**

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# **Export Market Development Grants Legislation Amendment Act 1993**

**No. 108 of 1993**

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**An Act to amend the law relating to export market  
development grants**

*[Assented to 22 December 1993]*

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Export Market Development Grants Legislation Amendment Act 1993*.

### **Commencement**

**2.(1)** Parts 1 and 2 commence on the day on which this Act receives the Royal Assent.

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(2) Part 3 is taken to have commenced on 1 July 1990.

**Amendments applying to periods starting on or after 1 July 1993**

3. The amendments made by Part 2, other than section 18, apply in relation to claims for grant in relation to periods starting on or after 1 July 1993.

**PART 2—AMENDMENT OF THE EXPORT MARKET  
DEVELOPMENT GRANTS ACT 1974**

**Principal Act**

4. In this Part, “**Principal Act**” means the *Export Market Development Grants Act 1974*<sup>1</sup>.

**Interpretation**

5. Section 3 of the Principal Act is amended:

- (a) by inserting “the whole or the first 6 months of” after “in respect of” in the definition of “active grant year” in subsection (1);
- (b) by omitting “grant year” (wherever occurring) from the definition of “affiliated company” in subsection (1) and substituting “period”;
- (c) by omitting “person” (first occurring) from the definition of “associated company” in subsection (1) and substituting “claimant”;
- (d) by omitting “relevant grant year” from the definition of “associated company” in subsection (1) and substituting “claim period”;
- (e) by omitting “a person or” from paragraph (d) of the definition of “prescribed associate” in subsection (1) and substituting “any person or in relation to an”;
- (f) by omitting “another” from paragraph (d) of the definition of “prescribed associate” in subsection (1) and substituting “any other”;
- (g) by inserting in subsection (1) the following definitions:
  - “**balance-year claim**’ has the meaning given by subsection 13A(5);
  - ‘**claim period**’ means:
    - (a) in relation to a full-year claim or a balance-year claim—the grant year to which the claim relates; or
    - (b) in relation to a first-half claim—the 6 months to which the claim relates;
  - ‘**first-half claim**’ has the meaning given by subsection 13A(6);
  - ‘**full-year claim**’ has the meaning given by subsection 13A(4);”.

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- (h) by omitting from subsection (7) “during a grant year” and substituting “, during the claim period in relation to a claim,”;
- (i) by omitting from subsection (7) “that grant year” and substituting “that period”;
- (j) by omitting from subsection (8) “during a grant year” and substituting “, during the claim period in relation to a claim,”;
- (k) by omitting from subsection (8) “that grant year” and substituting “that period”;
- (l) by renumbering as subsection (9A) the subsection (10) that was inserted by paragraph 3(h) of the *Export Market Development Grants Amendment Act (No. 2) 1990*;
- (m) by inserting after that subsection as so renumbered the following subsection:

“(9B) For the purposes of subsection (9), the transfer or issue to a person of shares in a company does not, in any circumstance, constitute the payment of an amount by a person to another person.”.

**Export earnings**

6. Section 3A of the Principal Act is amended:

- (a) by omitting from subsection (1) “in relation to a grant year” and substituting “for the claim period in relation to a claim”;
- (b) by omitting from subsection (1) “that grant year” (wherever occurring) and substituting “that period”;
- (c) by omitting from subsection (2B) “a grant year” and substituting “the claim period in relation to a claim”;
- (d) by omitting from subsection (2B) “that grant year” and substituting “that period”;
- (e) by omitting from subsection (2C) “grant year” and substituting “claim period”;
- (f) by omitting from subsection (2E) “grant year” and substituting “claim period”;
- (g) by omitting from paragraph (2F)(b) “a grant year” and substituting “the claim period”;
- (h) by omitting from subsection (2F) “the grant year” and substituting “the period”;
- (i) by omitting from subsection (2G) “a grant year” and substituting “the claim period in relation to a claim”;

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- (j) by omitting from subsection (2G) “the grant year” and substituting “the period”;
- (k) by omitting from paragraph (5)(b) “a grant year” and substituting “the claim period in relation to a claim”;
- (l) by omitting from subsection (5) “that grant year” and substituting “that period”.

**Hotels, meals and entertainment expenses on overseas visits  
(\$200 a day allowance)**

7. Section 11L of the Principal Act is amended:
- (a) by omitting from subsection (2) “, in the grant year in which the visit commences,”;
  - (b) by omitting from subsection (2) “in respect of” and substituting “on”;
  - (c) by omitting from subsection (3) “subsection (2)” and substituting “this section”;
  - (d) by omitting subsection (4) and substituting the following subsection:
    - “(4) If the person’s visit lasts for more than 21 whole days, subsection (2) does not apply to take a claimant to have incurred \$200 of claimable expenditure on any day after the first 21 whole days of the visit.”;
  - (e) by omitting from subsection (5) “in the grant year in which the visit commences an amount of claimable expenditure equal to” and substituting “only”.

**Amounts paid to directors**

8. Section 11M of the Principal Act is amended:
- (a) by omitting from paragraph (1)(a) “during a grant year by a claimant” and substituting “by a claimant during the claim period”;
  - (b) by omitting from subsection (1) “that grant year” and substituting “the claim period”.

9. After section 11U of the Principal Act the following sections are inserted:

**Expenditure incurred while body corporate under insolvency administration**

“11UA.(1) Subject to subsection (3), expenditure that a body corporate incurs while it is under insolvency administration is non-claimable expenditure.

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“(2) Subject to subsection (3), expenditure that a partnership incurs while a body corporate that is a member of the partnership is under insolvency administration is non-claimable expenditure.

“(3) Subsection (1) or (2) does not apply to make expenditure non-claimable for the purposes of a claim the Commission receives that includes, or is accompanied by, a certificate:

- (a) given by the administering authority in relation to the body corporate referred to in that subsection, or by a registered liquidator; and
- (b) stating that the body corporate was solvent when the expenditure was incurred.

Note: Whether the expenditure is claimable in these circumstances depends on Division 2.

“(4) A person must not, knowingly or recklessly, give a certificate under subsection (3) stating that a body corporate was solvent when expenditure was incurred if the body corporate was not, in fact, solvent at that time.

Penalty: Imprisonment for 2 years.

“(5) A body corporate is **under insolvency administration** if, and only if, it is in a situation described in column 1 of the table below. The **administering authority** for a body corporate that is under insolvency administration is as set out in column 2 of the table.

Column 1 Situation of body corporate	Column 2 Administering authority
Part 1	
<p>under the Corporations Law of a State or internal Territory:</p> <ul style="list-style-type: none"> <li>• the body corporate is being wound up</li> <li>• there is a receiver, receiver and manager, or other controller, of property of the body corporate who has functions or powers in connection with managing the body corporate</li> <li>• the body corporate is under administration or official management</li> </ul>	<ul style="list-style-type: none"> <li>• the liquidator or provisional liquidator of the body corporate</li> <li>• the receiver, receiver and manager, or other controller, of property of the body corporate</li> <li>• the administrator, or the official manager, of the body corporate</li> </ul>

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TABLE—*continued*

Column 1 Situation of body corporate	Column 2 Administering authority
<ul style="list-style-type: none"> <li>• the body corporate has executed a deed of company arrangement that has not yet terminated</li> <li>• the body corporate has entered into a compromise or arrangement with another person and the administration of the compromise or arrangement has not been concluded</li> </ul> <p style="text-align: center;">Part 2</p> <p>under the law of an external Territory or a foreign country:</p> <ul style="list-style-type: none"> <li>• a body corporate is in a situation of a kind set out in Part 1 of this Column</li> </ul>	<ul style="list-style-type: none"> <li>• the administrator of the deed of company arrangement</li> <li>• the administrator (if any) of the compromise or arrangement</li> </ul>          <ul style="list-style-type: none"> <li>• the person holding, under the law of the external Territory or foreign country, a position equivalent to that of the person who would be the administering authority for a body corporate in the situation set out in Part 1 of Column 1</li> </ul>

“(6) In subsection (5), a reference to the Corporations Law of a State or internal Territory includes a reference to a corresponding previous law, within the meaning of that Corporations Law, in relation to that Corporations Law.

“(7) In this section:

**‘registered liquidator’** means a person registered as a liquidator under subsection 1282(2), or taken to be registered as a liquidator under Part 9.2, of the Corporations Law of a State or internal Territory;

**‘solvent’**, in relation to a body corporate, means that the body corporate is able to pay all its debts as and when they become due and payable.



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**Expenditure incurred while individual under insolvency administration**

“11UB.(1) Expenditure that an individual incurs while he or she is under insolvency administration is non-claimable expenditure.

“(2) Expenditure that a body corporate incurs while an individual who is a director of the body corporate is under insolvency administration is non-claimable expenditure.

“(3) Expenditure that a partnership incurs:

(a) while an individual who is a member of the partnership is under insolvency administration; or

(b) while an individual who is a director of a body corporate that is a member of the partnership is under insolvency administration;

is non-claimable expenditure.

“(4) An individual is **under insolvency administration** if, and only if:

(a) the individual is in any of the following situations under the *Bankruptcy Act 1966*:

(i) the individual is a bankrupt in respect of a bankruptcy from which he or she has not been discharged;

(ii) property of the individual is subject to control under section 50 or 188 of that Act;

(iii) the individual has, in the previous 3 years, executed a deed of assignment or deed of arrangement under Part X of that Act;

(iv) creditors of the individual have, in the previous 3 years, accepted a composition under Part X of that Act; or

(b) the individual is in a situation of a kind referred to in paragraph (a) under the law of an external Territory or a foreign country.”.

**10.** After section 11Y of the Principal Act the following section is inserted in Division 3 of Part 1A:

**Certain convictions may result in expenditure being non-claimable**

“11YA.(1) This section applies to a person who has been convicted (whether before or after the commencement of this section):

(a) on indictment of an offence against an Australian law, or any other law, in connection with the promotion, formation or management of a body corporate; or

(b) of an offence against an Australian law, or any other law, involving fraud or dishonesty that is punishable by imprisonment for life or for a period, or maximum period, of at least 2 years; or

(c) of an offence for a contravention of section 232, 590, 591, 592, 595, 996 or 1307, of Part 6.6, or of Division 2 of Part 7.11, of the Corporations Law of a State or internal Territory; or

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(d) of an offence of which the person is guilty because of subsection 1317FA(1) of the Corporations Law of a State or internal Territory.

“(2) The **ineligible period** is the period starting when the person was convicted and ending:

- (a) unless paragraph (b) applies—5 years after the conviction; or
- (b) if the person was sentenced to imprisonment—5 years after the person’s release from prison.

“(3) Expenditure that the person incurs during the ineligible period is non-claimable expenditure.

“(4) Expenditure that a body corporate incurs:

- (a) while the person is a director of the body corporate; and
- (b) during the ineligible period;

is non-claimable expenditure.

“(5) Expenditure that a partnership incurs:

- (a) while the person:
  - (i) is a member of the partnership; or
  - (ii) is a director of a body corporate that is a member of the partnership; and
- (b) during the ineligible period;

is non-claimable expenditure.

“(6) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions relieving persons from requirements to disclose spent convictions).

“(7) In this section, a reference to a section, Part or Division of the Corporations Law of a State or internal Territory includes a reference to a corresponding previous law, within the meaning of that Corporations Law, in relation to that section, Part or Division.

“(8) In this section:

‘**Australian law**’ means a law of the Commonwealth or of a State or Territory.”.

**Certain qualifying export development expenditure ignored**

**11.** Section 11ZE of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) For the purposes of subsection (1), the effect of writing-off, waiving, or otherwise releasing a person from, an obligation to repay or reimburse an amount is to be disregarded.”;

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

“(6) In this section:  
‘paid’ includes repaid.”

**Insertion of heading**

12. Before section 12 of the Principal Act the following heading is inserted in Part II:

*“Division 1—Commission to consider claims and pay grants”.*

**Grants**

13. Section 12 of the Principal Act is amended:

- (a) by omitting from subsection (2) “Where” and substituting “Subject to subsection (2A), where”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) The Commission must not pay a grant in respect of a first-half claim until after the end of the grant year that includes the claim period.”

**Insertion of heading**

14. After section 12 of the Principal Act the following heading is inserted:

*“Division 2—Claims”.*

**Claims for grants**

15. Section 13 of the Principal Act is amended:

- (a) by omitting subsection (2A) and substituting the following subsection:
  - “(2A) A claim must be submitted:
    - (a) if it is a full-year claim or a balance-year claim—within 5 months after the end of the claim period; or
    - (b) if it is a first-half claim—within 6 months after the end of the claim period.”;
- (b) by omitting from subsection (2B) “grant year” (wherever occurring) and substituting “period”;
- (c) by omitting from subsection (4) “grant year” (wherever occurring) and substituting “period”;

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(d) by adding at the end the following subsections:

- “(5) If the Commission receives a claim, the Commission may:
- (a) by notice in writing given to the claimant, request the claimant;  
or
  - (b) if the claimant is a body corporate that has an affiliated company in relation to the claim period—by notice in writing given to the affiliated company, request the affiliated company;

to supply to the Commission specified information, or to make available to the Commission specified books, records or documents, that the Commission requires for the administration of any other scheme of financial assistance it administers.

“(6) The Commission may refuse to consider a claim if the claimant or an affiliated company has not complied with a request under subsection (5).”.

16. After section 13 of the Principal Act the following section and heading are inserted:

**Periods in relation to which claims may be made**

“13A.(1) Subject to subsections (2) and (3), a claim may be made in relation to:

- (a) a grant year; or
- (b) the first 6 months of a grant year.

“(2) A claimant may make a claim in relation to a grant year even if the claimant has already made a claim in relation to the first 6 months of the grant year. The amount of grant payable in relation to the grant year will, however, be reduced by the amount of grant paid or payable in relation to the first 6 months of the grant year (see section 16AA).

“(3) A claimant must not make a claim in relation to the first 6 months of a grant year that is after the claimant’s first 3 active grant years.

“(4) A claim made in relation to a grant year, otherwise than in the circumstances referred to in subsection (2), is called a ‘**full-year claim**’.

“(5) A claim made in relation to a grant year in the circumstances referred to in subsection (2) is called a ‘**balance-year claim**’.

“(6) A claim made in relation to the first 6 months of a grant year is called a ‘**first-half claim**’.

*“Division 3—Eligibility”.*

**Eligibility for grant**

17. Section 14 of the Principal Act is amended:

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- (a) by omitting from subsection (1) “a grant year” and substituting “the claim period”;
- (b) by omitting from paragraphs (1)(a) and (b) “grant year” and substituting “claim period”;
- (c) by omitting from paragraph (1)(c) all the words after “eligible expenditure for” and substituting “the claim period and for the year immediately preceding the grant year that is or includes the claim period is \$30,000 or more.”;
- (d) by inserting after subsection (3) the following subsection:

“(3A) Grant is not payable to a claimant in the circumstances specified in section 14A.”;
- (e) by omitting from subsection (4) “subsection (3)” and substituting “subsection (5)”;
- (f) by omitting subsections (7) and (8) and substituting the following subsection:

“(7) Grant is not payable to a claimant (other than an approved trading house) in the circumstances specified in section 14B.”;
- (g) by omitting from subsection (9) “claimant has received grants in respect of 8 or more grant years” and substituting “claim period is after the claimant’s first 8 active grant years”;
- (h) by omitting subsection (15).

**18.** After section 14 of the Principal Act the following section is inserted:

**Certain convictions may result in grant not being payable**

“14A.(1) This section applies in relation to a claim:

- (a) made by:
  - (i) a person who is or has been convicted of an offence referred to in subsection 11YA(1); or
  - (ii) a body corporate of which a person who is or has been so convicted is a director; or
  - (iii) a partnership in relation to which any of the following conditions is satisfied:
    - (A) a person who is or has been so convicted is a member of the partnership;
    - (B) a person who is or has been so convicted is a director of a body corporate that is a member of the partnership; or
  - (iv) an approved joint venture or an approved consortium in relation to which any of the following conditions is satisfied:
    - (A) a person who is or has been so convicted is a member of the consortium or joint venture;

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- (B) a person who is or has been so convicted is a director of a body corporate that is a member of the consortium or joint venture;
  - (C) a person who is or has been so convicted is a member of a partnership that is a member of the consortium or joint venture; and
- (b) the claim period in relation to which is wholly or partly before the conviction.
- “(2) Grant is not payable in respect of the claim after the conviction.
- “(3) Subsection (2) has effect:
- (a) even if an entitlement to payment of grant in respect of the claim arose or arises:
    - (i) before the commencement of this section; or
    - (ii) before the conviction; and
  - (b) even if the claim was made before the commencement of this section; and
  - (c) even if the conviction occurred before the commencement of this section; and
  - (d) whether the claim is or was made before or after the conviction.
- “(4) This section does not affect the validity of a payment of grant in respect of the claim:
- (a) before the commencement of this section; or
  - (b) before the conviction.
- “(5) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions relieving persons from requirements to disclose spent convictions).”.

19. Before section 15 of the Principal Act the following section is inserted:

**Claimant’s export earnings must not exceed limit**

“14B.(1) A grant is not payable to a claimant (other than an approved trading house) if the claimant’s export earnings amount exceeds:

- (a) if the claim is a full-year claim or a balance-year claim—\$25,000,000; or
- (b) if the claim is a first-half claim—\$12,500,000.

“(2) Unless subsection (3) applies, the claimant’s **export earnings amount** is the total of the claimant’s export earnings for the claim period.

“(3) The claimant’s **export earnings amount** is to be worked out under subsection (4) if the claimant is a body corporate that has at least one affiliated company in relation to the claim period that:

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- (a) is not an approved trading house; and
- (b) has made a claim in relation to the same period.

An affiliated company that meets this description is called a **‘relevant affiliate’**.

“(4) This is how to work out the claimant’s export earnings amount if subsection (3) applies:

- (a) work out the total of the claimant’s export earnings for the claim period;
- (b) add to that the amount of the relevant affiliate’s export earnings, or each relevant affiliate’s export earnings, as the case requires:
  - (i) for the claim period; or
  - (ii) if the relevant affiliate was an affiliated company for part only of the claim period—for that part of the claim period.”.

**Grants in relation to new markets**

**20.** Section 15 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(a) “has received grants in respect of 8 or more grant years” and substituting “has had 8 or more active grant years before the claim period”;
- (b) by omitting from paragraph (1)(b) “a subsequent grant year” and substituting “the claim period”;
- (c) by omitting from subsection (1) “that grant year” (wherever occurring) and substituting “the claim period”;
- (d) by adding at the end of subsection (1) the following Note:

“Note: Because of this subsection (in particular paragraph (a)) and subsection 13A(3), the claim must be a full-year claim.”;
- (e) by omitting from subsection (2) “grant year” and substituting “claim period”;
- (f) by omitting paragraphs (2)(a) and (b) and substituting the following paragraphs:
  - “(a) the supply of goods, services, know-how or property rights to a market that is a new market for the claimant in relation to goods, services, know-how or property rights, as the case requires; or
  - (b) the supply of technical services to a market that is a new market for the claimant in relation to technical services.”;
- (g) by omitting from subsection (3) **“a particular kind of”**;
- (h) by omitting from subsection (3) “that kind of goods, services, know-how or property rights” and substituting “goods, services, know-how or property rights, as the case requires”;
- (i) by omitting from subsection (4) **“a particular kind of”**;

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- (j) by omitting from subsection (4) “that kind of”;
- (k) by omitting subsections (5) and (6) and substituting the following subsection:

“(5) A market stops being a new market for the claimant in relation to goods, services, know-how, property rights or technical services after the claimant’s first 3 active grant years that are such years because of the application of this section to the claimant, the market, and goods, services, know-how, property rights or technical services, as the case requires.”;

- (l) by omitting from subsection (7) “a particular kind of”;
- (m) by omitting from the definition “goods” in subsection (8) all the words after “eligible goods” (first occurring);
- (n) by omitting “a particular kind of” from the definition of “prescribed period” in subsection (8);
- (o) by omitting “that particular kind of goods, services, know-how, property rights or technical services” from paragraph (a) of the definition of “prescribed period” in subsection (8) and substituting “goods, services, property rights or technical services, as the case requires”;
- (p) by omitting from the definition of “property rights” in subsection (8) all the words after “eligible industrial property rights” (first occurring);
- (q) by omitting from the definition of “services” in subsection (8) all the words after paragraph (e);
- (r) by omitting from the definition of “technical services” in subsection (8) all the words after paragraph (e).

**Amount of grant**

**21.** Section 16 of the Principal Act is amended:

- (a) by omitting from subsection (1) “a grant year” and substituting “the claim period”;
- (b) by omitting from paragraphs (1)(a) and (c) “that grant year” and substituting “the claim period”;
- (c) by omitting from subsection (2) “a grant year” and substituting “the claim period”;
- (d) by omitting from paragraph (2)(b) “that grant year” and substituting “the claim period”;
- (e) by omitting from subsection (3) “a grant year” and substituting “the claim period”;
- (f) by omitting from paragraphs (3)(a) and (b) “that grant year” and substituting “the claim period”;



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- (g) by omitting from subsection (6) “a grant year” and substituting “the claim period”;
- (h) by omitting from paragraph (6)(a) “grant year is” and substituting “claim period is, or is part of,”;
- (i) by omitting from paragraph (6)(b) “grant year is” and substituting “claim period is, or is part of,”;
- (j) by omitting from subparagraphs (6)(b)(i), (iii) and (iv) “grant year” and substituting “claim period”;
- (k) by adding at the end the following subsection:

“(9) The effect of this section in relation to a balance-year claim is subject to section 16AA.”.

22. After section 16 of the Principal Act the following section is inserted:

**Amount payable in respect of balance-year claim to be reduced by grant paid in respect of first half of year**

“16AA. The amount of a claimant’s grant in respect of a balance-year claim is the amount worked out under section 16 reduced by the amount of grant paid or payable to the claimant in respect of the claimant’s first-half claim.”.

**Carry forward of unmatched eligible expenditure**

23. Section 16A of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) A claimant has **unmatched eligible expenditure** for a grant year if:

- (a) the claimant has made a full-year claim or a balance-year claim in relation to the grant year; and
- (b) the claimant’s export performance adjusted grant amount (see subsection 16(6)) is less than the claimant’s ceiling adjusted grant amount (see subsection 16(5)).”;

- (b) by omitting subparagraph (3)(b)(i) and substituting the following subparagraph:

“(i) these conditions are satisfied:

- (A) the claimant’s eligible expenditure (apart from this subsection) is at least \$30,000; and
- (B) the claimant’s provisional grant amount is less than the claimant’s grant ceiling; and
- (C) the claimant’s provisional grant amount is also less than the claimant’s export performance limit for Grant Year 2; or”;

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- (c) by omitting from subparagraph (3)(b)(ii) “both” and substituting “these conditions are satisfied”;
- (d) by inserting after paragraph (3)(b) the following word and paragraph:
  - “and (c) the claimant makes a full-year claim or a balance-year claim in relation to Grant Year 2;”;
- (e) by omitting from subsection (3) “so much” and substituting “then, for the purposes of the application of this Act to the claim referred to in paragraph (c), so much”;
- (f) by omitting subparagraph (6)(a)(i) and substituting the following subparagraph:
  - “(i) these conditions are satisfied:
    - (A) the claimant’s eligible expenditure is at least \$30,000; and
    - (B) the claimant’s provisional grant amount (apart from this section) is less than the claimant’s grant ceiling; and
    - (C) the claimant’s provisional grant amount (apart from this section) is also less than the claimant’s export performance limit for Grant Year 3; or”;
- (g) by omitting from subparagraph (6)(a)(ii) “both” and substituting “these conditions are satisfied”;
- (h) by inserting after paragraph (6)(b) the following word and paragraph:
  - “and (c) the claimant makes a full-year claim or a balance-year claim in relation to Grant Year 3;”;
- (i) by omitting from subsection (6) “the unmatched eligible expenditure” and substituting “then, for the purposes of the application of this Act to the claim referred to in paragraph (c), the unmatched eligible expenditure”.

**Change in ownership of business etc.**

**24.** Section 19 of the Principal Act is amended:

- (a) by inserting after paragraph (c) the following paragraphs:
  - “(ca) subject to subsection (2), treat any expenditure incurred by the original owner that is non-claimable expenditure because of section 11UA or 11UB as being expenditure incurred by the new owner otherwise than in circumstances to which those sections apply; or

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- (cb) subject to subsection (3), treat any expenditure incurred by the original owner that is non-claimable expenditure because of section 11YA as being expenditure incurred by the new owner otherwise than in circumstances to which that section applies; or”;
- (b) by adding at the end the following subsections:

“(2) Paragraph (1)(ca) only applies if the Commission is satisfied, having regard in particular to any relationship between the original owner and the new owner, that treating expenditure in accordance with that paragraph would be consistent with the purpose of sections 11UA and 11UB.

“(3) Paragraph (1)(cb) only applies if the Commission is satisfied, having regard in particular to any relationship between the original owner and the new owner, that treating expenditure in accordance with that paragraph would be consistent with the purpose of section 11YA.”.

**Adjustment of amounts**

**25.** Section 38 of the Principal Act is amended by adding at the end the following subsections:

“(12) This section applies to a person who makes a first-half claim in relation to a grant year but who does not make a balance-year claim in relation to the grant year as if:

- (a) the first-half claim were a full-year claim (the ‘**notional full-year claim**’); and
- (b) the amount of grant payable in relation to the notional full-year claim were the amount of grant paid or payable in relation to the first-half claim; and
- (c) any grant paid or payable in relation to the first-half claim were grant paid or payable in relation to the notional full-year claim.

“(13) This section applies to a person who makes a first-half claim and a balance-year claim in relation to the same grant year as if:

- (a) the first-half claim had not been made and the balance-year claim were a full-year claim (the ‘**notional full-year claim**’); and
- (b) the amount of grant payable in relation to the notional full-year claim were equal to the sum of the grant paid or payable in relation to the first-half claim and the grant paid or payable in relation to the balance-year claim; and
- (c) any grant paid or payable in relation to the first-half claim or the balance year claim were grant paid or payable in relation to the notional full-year claim.

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“(14) In subsections (12) and (13), a reference to an amount of grant paid or payable in relation to a claim is a reference to an amount so paid or payable, disregarding the effect of subsection (8).”.

**Convicted persons to repay grants etc.**

26. Section 39A of the Principal Act is amended:

- (a) by omitting from subsection (1) “grant year” (wherever occurring) and substituting “period”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) If:

- (a) subsection (1) applies to a first-half claim; and
  - (b) the claimant makes a balance-year claim in relation to the grant year that includes the claim period for the first-half claim;
- subsection (1) applies to the balance-year claim as if the offence relating to the first-half claim also related to the balance-year claim.”.

**Review of decisions of Commission**

27. Section 40A of the Principal Act is amended by omitting paragraph (a) of the definition of “decision of the Commission” in subsection (1) and substituting the following paragraph:

- “(a) in connection with a claim for a grant the claim period for which is, or is included in, the grant year that started on 1 July 1978 or a later grant year; or”.

**Collection of statistics relating to operation of Act**

28. Section 40C of the Principal Act is amended by adding at the end the following subsection:

“(3) For the purposes of this section, a person is a claimant in relation to a grant year if:

- (a) the person has made a full-year claim or a balance-year claim in relation to the grant year; or
- (b) the person has made a first-half claim in relation to the first 6 months of the grant year.”.

**PART 3—AMENDMENT OF THE EXPORT MARKET  
DEVELOPMENT GRANTS AMENDMENT ACT (NO. 2) 1990**

**Principal Act**

29. In this Part, “Principal Act” means the *Export Market Development Grants Amendment Act (No. 2) 1990*<sup>2</sup>.

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**Interpretation**

**30.** Section 3 of the Principal Act is amended by omitting from paragraph (a) “technical” and substituting “technological”.

**Schedule**

**31.** The Schedule to the Principal Act is amended:

- (a) by omitting from the amendment of subsection 3(4) “ ‘or eligible internal educational services’ ” and substituting “ ‘, eligible internal educational services or eligible internal services’ ”;
- (b) by omitting from the amendment of paragraph 3A(1)(f) “; or”;
- (c) by omitting from the amendment of subsection 38(7) “the person” and substituting “that person”.

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**NOTES**

- 1. No. 154, 1974 as amended. For previous amendments, see Nos. 36 and 192, 1978; Nos. 74 and 119, 1981; No. 157, 1982; Nos. 65, 110 and 187, 1985; No. 168, 1986; No. 141, 1987; Nos. 38 and 90, 1988; No. 27, 1990; Nos. 8 and 66, 1991; and No. 106, 1992.
- 2. No. 8, 1991.

*[Minister's second reading speech made in—  
Senate on 30 September 1993  
House of Representatives on 16 November 1993]*