



# **Export Market Development Grants Amendment Act 1994**

**No. 123 of 1994**

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# Export Market Development Grants Amendment Act 1994

No. 123 of 1994

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

[Assented to 6 October 1994]

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title etc.**

**1.(1)** This Act may be cited as the *Export Market Development Grants Amendment Act 1994*.

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

### **Commencement**

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

## **PART 2—AMENDMENTS RELATING TO THE DURATION OF APPROVALS OF TRADING HOUSES, JOINT VENTURES AND CONSORTIA**

### **Object of Part**

3. The object of this Part is to limit the duration of approvals of trading houses, joint ventures and consortia to 3 years. However, approvals may be renewed.

### **Approval, and cancellation of approval, of trading houses**

4. Section 40BA of the Principal Act is amended by inserting after subsection (3) the following subsections:

“(3A) An approval under subsection (1) ceases to be in force at the beginning of the third anniversary of the day on which the approval took effect.

“(3B) In spite of subsection (3A), if the third anniversary of the day on which an approval under subsection (1) took effect occurs before the ninetieth day after the date of commencement of this subsection, the approval ceases to be in force at the end of that ninetieth day.

“(3C) If an approval ceases to be in force because of subsection (3A) or (3B), this Act does not prevent the Commission from deciding to give a fresh approval under subsection (1).

“(3D) An application for a fresh approval under subsection (1) must be made during the 90-day period ending at the time when the current approval ceases to be in force.

“(3E) In spite of subsection (2), a fresh approval that is given during that 90-day period takes effect immediately after the end of that period.”.

### **Approval, and variation and cancellation of approval, of joint ventures and consortia**

5. Section 40BD of the Principal Act is amended by inserting after subsection (4) the following subsections:

“(4A) An approval under subsection (1) ceases to be in force at the beginning of the third anniversary of the day on which the approval took effect.

“(4B) In spite of subsection (4A), if the third anniversary of the day on which an approval under subsection (1) took effect occurs before the ninetieth day after the date of commencement of this subsection, the approval ceases to be in force at the end of that ninetieth day.

“(4C) If an approval ceases to be in force because of subsection (4A) or (4B), this Act does not prevent the Commission from deciding to give a fresh approval under subsection (1).

“(4D) An application for a fresh approval under subsection (1) must be made during the 90-day period ending at the time when the current approval ceases to be in force.

“(4E) In spite of subsection (2), a fresh approval that is given during that 90-day period takes effect immediately after the end of that period.”.

### **PART 3—AMENDMENTS RELATING TO THE GRANT ENTITLEMENTS OF APPROVED JOINT VENTURES AND APPROVED CONSORTIA**

#### **Object of Part**

6. The object of this Part is to provide that grants for approved joint ventures and approved consortia may be made for up to 5 years.

#### **Eligibility for grant**

7. Section 14 of the Principal Act is amended by omitting subsection (9) and substituting the following subsection:

“(9) Subject to subsections (10), (11), (12), (13) and (14) and section 15, a grant is not payable to a claimant if:

- (a) if the claimant is neither an approved joint venture nor an approved consortium—the claim period is after the claimant’s first 8 active grant years; or
- (b) if the claimant is an approved joint venture or an approved consortium—the claim period is after the claimant’s first 5 active grant years.”.

### **PART 4—AMENDMENTS RELATING TO CALCULATION OF ENTITLEMENT TO OVERSEAS VISIT ALLOWANCE**

#### **Object of Part**

8. The object of this Part is to provide for entitlement to overseas visit allowance to be calculated on the basis of individual days instead of on the basis of overall duration of the visit.

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

9. Section 11L of the Principal Act is amended:

- (a) by omitting paragraphs (2)(b) and (c) and substituting the following paragraph:

“(b) a particular whole day that elapsed during the visit is:

- (i) an **activity day** (defined by subsection (3A)); or
- (ii) a day consisting of, or included in, a **bridging period** (defined by subsection (3B)); and”;

- (b) by re-lettering paragraph (2)(d) as (c);
- (c) by omitting from subsection (2) “on each of the whole days elapsed during the visit” and substituting “on that whole day”;
- (d) by inserting after subsection (3) the following subsections:

“(3A) For the purposes of this section, a whole day is an **activity day** if:

- (a) on that whole day, the person was primarily and principally occupied in undertaking qualifying export development activities of the claimant; and
- (b) the activities did not consist mainly of attendance at or participation in:
  - (i) an educational course on international business development; or
  - (ii) a foreign language training course; or
  - (iii) a combination of the courses referred to in subparagraphs (i) and (ii).

“(3B) For the purposes of this section, a period is a **bridging period** if:

- (a) the period is either:
  - (i) a single whole day during any part of which the person was present in a place where the day was a Saturday, a Sunday or a public holiday; or
  - (ii) 2 or more consecutive whole days, where during any part of each of those whole days the person was present in a place where the whole day concerned was a Saturday, a Sunday or a public holiday; and
- (b) either or both of the following whole days was an activity day that elapsed during the visit:
  - (i) the whole day immediately before the period;
  - (ii) the whole day immediately after the period.

Note: Subsection (3A) defines ‘activity day’.”;

- (e) by inserting in subsection (5) “a whole day that elapsed during” after “during”;
- (f) by omitting from subsection (5) “of the \$200 a day referred to in subsection (2)” and substituting “of the \$200 applicable to that day under subsection (2)”.

### **Application**

**10.(1)** Subject to subsection (2), the amendments made by this Part apply in relation to a visit that begins after the commencement of this section.

(2) If:

- (a) a visit began before the day on which this section commences, but was not completed before that day; and
- (b) the claimant elects in writing that the amendments made by this Part apply in relation to the visit;

those amendments apply in relation to the visit.

(3) A copy of the election must be attached to the claim concerned.

## **PART 5—AMENDMENTS RELATING TO INVESTIGATION PERIODS FOR APPROVALS OF TRADING HOUSES, JOINT VENTURES AND CONSORTIA**

### **Object of Part**

11. The object of this Part is to lengthen the period during which the Commission may ask questions of an applicant for approved trading house, approved joint venture or approved consortium status.

### **Approval mechanism (trading houses)**

12. Section 40BB of the Principal Act is amended by omitting from subsection (5) “30” and substituting “60”.

### **Approval mechanism (joint ventures and consortia)**

13. Section 40BE of the Principal Act is amended by omitting from subsection (5) “30” and substituting “60”.

### **Application**

14. The amendments made by this Division apply to an application received after the twenty-ninth day before the date of commencement of this section.

## **PART 6—AMENDMENTS RELATING TO GUIDELINES FOR CANCELLATION OF APPROVAL OF TRADING HOUSES, JOINT VENTURES AND CONSORTIA**

### **Object of Part**

15. The object of this Part is to clarify the matters which may be covered by guidelines relating to the cancellation of an approval as an approved trading house, an approved joint venture or an approved consortium.

### **Commission must issue guidelines governing grant and cancellation of approval of a person as an approved trading house and new business of an approved trading house**

16. Section 41 of the Principal Act is amended:

(a) by inserting after subsection (3) the following subsection:

“(3A) The grounds on which a person’s approval as an approved trading house may be cancelled need not deal with the same matters dealt with by the criteria that applied to that approval.”;

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

“(7) In determining the meaning of a provision of this Act (other than this section) or of any other law of the Commonwealth, subsection (3A) is to be disregarded.”.

**Commission must issue guidelines governing grant, variation and cancellation of approval of a group of persons as an approved joint venture or approved consortium**

17. Section 42 of the Principal Act is amended:

(a) by inserting after subsection (3) the following subsection:

“(3A) The grounds on which a group’s approval as an approved joint venture or approved consortium may be cancelled need not deal with the same matters dealt with by the criteria that applied to that approval.”;

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

“(7) In determining the meaning of a provision of this Act (other than this section) or of any other law of the Commonwealth, subsection (3A) is to be disregarded.”.

**PART 7—AMENDMENTS RELATING TO THE  
ACCREDITATION OF EXPORT MARKET DEVELOPMENT  
GRANTS CONSULTANTS**

**Interpretation**

18. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘**export market development grants consultant**’ means a person who demands or receives any fee for or in relation to the preparation of a claim;”.

**Review of decisions of Commission**

19. Section 40A of the Principal Act is amended by adding at the end of subsection (1) the following word and paragraphs:

“; or (g) under a scheme formulated under section 42A, to refuse to accredit an export market development grants consultant; or

(h) under a scheme formulated under section 42A, to vary or cancel the accreditation of an export market development grants consultant.”.



**Insertion of new sections**

**20.** After section 42 of the Principal Act the following sections are inserted:

**Accreditation of export market development grants consultants**

*Accreditation scheme*

“42A.(1) The Commission may, by written instrument, formulate a scheme for the accreditation of export market development grants consultants.

*Accreditation decisions*

“(2) The scheme may empower the Commission to make decisions:

- (a) accrediting export market development grants consultants; and
- (b) varying or cancelling the accreditation of export market development grants consultants.

*Register of accredited consultants*

“(3) The scheme may make provision for and in relation to the keeping of a register by the Commission of export market development grants consultants accredited under the scheme. In particular, the scheme may make provision for the following:

- (a) the register to be kept in such form and manner as the Commission directs;
- (b) persons to inspect the register;
- (c) persons to obtain information contained in the register;
- (d) fees to be charged by the Commission for such an inspection or for providing such information.

*Copies of scheme to be made available*

“(4) The Commission must give a free copy of the scheme to any person who requests a copy.

*Disallowable instrument*

“(5) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**False representation that an export market development grants consultant is accredited**

*Offence*

“42B.(1) If, at a time when a scheme is in force under section 42A:

- (a) an export market development grants consultant is not accredited under the scheme; and

(b) the consultant, or another person, intentionally or recklessly makes a representation that the consultant is so accredited;  
the consultant or the other person, as the case requires, is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

*Court order*

“(2) In addition, the court may order the consultant or the other person, as the case requires, to pay to the Commonwealth, by way of penalty, an amount not exceeding the amount that, in the opinion of the court, represents the total gross income derived by the consultant as a result of the misrepresentation.

**Conduct by directors, servants and agents—section 42B**

*State of mind*

“42C.(1) If, in proceedings for an offence against, or arising out of, section 42B, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

*Conduct*

“(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against, or arising out of, section 42B, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

*Extended meaning of “state of mind”*

“(3) A reference in subsection (1) to the state of mind of a body corporate includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the body corporate; and
- (b) the body’s reasons for the intention, opinion, belief or purpose.

*Extended meaning of “director”*

“(4) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

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*Extended meaning of “engaging in conduct”*

“(5) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.”.

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**NOTE**

*Export Market Development Grants Act 1974*

1. No. 154, 1974, as amended. For previous amendments, see Nos. 36 and 192, 1978; Nos. 74 and 119, 1981; No. 157 (as amended by No.110, 1985), 1982; Nos. 65, 110 (as amended by No.187, 1985) and 187 (as amended by No.141, 1987), 1985; No. 168, 1986; No. 141, 1987; Nos. 38 and 90, 1988; No. 27, 1990; Nos. 8 (as amended by No.108, 1993) and 66, 1991; No. 186, 1992; and No. 108, 1993.

[*Minister’s second reading speech made in—  
Senate on 11 May 1994  
House of Representatives on 22 September*]