



Export Market Development Grants Amendment Act (No. 1) 1996

No. 23, 1996

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

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Export Market Development Grants Amendment Act (No. 1) 1996

No. 23, 1996

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

[Assented to 28 June 1996]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Export Market Development Grants Amendment Act (No. 1) 1996*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 8 commences immediately after the commencement of Schedule 5.

3 Amendments of the *Export Market Development Grants Act 1974*

The *Export Market Development Grants Act 1974* is amended in accordance with the applicable items in the Schedules, and the other items in the Schedules have effect according to their terms.

Schedule 1—Grant ceiling

1 Subsection 3(1) (paragraph (a) of the definition of *grant ceiling*)

Omit "\$250,000", substitute "\$200,000".

2 Application of amendment

- (1) The amendment made by this Schedule applies in relation to a balance-year claim or a full-year claim in relation to the grant year beginning on 1 July 1995.
- (2) The amendment made by this Schedule applies in relation to a claim for grant in relation to a period beginning on or after 1 July 1996.

Schedule 2—Disclosure of eligible expenditure after claim submitted

1 After section 12

Insert:

12A Disclosure of eligible expenditure after claim submitted

- (1) This section applies to a claim if, on one or more occasions after the claim is submitted, but before the Commission determines whether the claimant is entitled to a grant, the claimant discloses to the Commission eligible expenditure that was not disclosed in the claim. The total of that eligible expenditure is called the *unclaimed expenditure*.
- (2) If:
 - (a) the amount that would have been the amount of the claimant's grant if it were assumed that this section had not been enacted;
exceeds:
 - (b) 110% of the amount that would have been the amount of the claimant's grant if it were assumed that the unclaimed expenditure had not been incurred;the amount of the claimant's grant is reduced by the amount of the excess.
- (3) Subsection (2) has effect despite section 16.

2 Subsection 16(1) (note)

Repeal the note, substitute:

- Note 1: See section 12A for special rules about disclosure of eligible expenditure after the submission of a claim.
- Note 2: See Division 4 for special rules about bodies corporate that are members of related company groups.

3 Subsection 16(2) (note)

Repeal the note, substitute:

- Note 1: See section 12A for special rules about disclosure of eligible expenditure after the submission of a claim.
- Note 2: See Division 4 for special rules about bodies corporate that are members of related company groups.

4 Application of amendments

- (1) The amendments made by this Schedule apply in relation to a balance-year claim or a full-year claim in relation to the grant year beginning on 1 July 1995.
- (2) The amendments made by this Schedule apply in relation to a claim for grant in relation to a period beginning on or after 1 July 1996.

Schedule 3—Limit on membership of multiple approved joint ventures and consortia

1 Subsection 40A(1) (paragraph (d) of the definition of *decision of the Commission*)

After “subsection 40BD(1)”, insert “or 40BH(2)”.

2 Subsection 40A(1) (paragraph (e) of the definition of *decision of the Commission*)

After “subsection 40BD(5)”, insert “or 40BH(2)”.

3 After section 40BG

Insert:

40BH Limit on membership of multiple approved joint ventures and consortia

- (1) The Minister may make a written determination specifying the maximum number of approved joint ventures and approved consortia of which a person may be a member.
- (2) The Commission must not:
 - (a) approve a group of persons as an approved joint venture or approved consortium; or
 - (b) vary a group's approval as an approved joint venture or approved consortium;if the approval or variation would have the result that a person is a member of more than the maximum number of approved joint ventures and approved consortia mentioned in the determination.
- (3) A copy of the determination must be published in the *Gazette*.
- (4) The Commission must give a free copy of the determination to any person who requests a copy.
- (5) The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

4 Application of amendments

The amendments made by this Schedule apply to an approval given, or a variation made, after the commencement of this item.

Schedule 4—Conditions of approval of joint ventures and consortia

1 After section 11X

Insert:

11XA Approved joint ventures and consortia—breach of conditions

- (1) This section applies to expenditure of an approved joint venture or an approved consortium if the approval of the joint venture or consortium is subject to one or more conditions.

Note: Conditions of approval are dealt with in subsections 40BD(2) and (5).

- (2) The expenditure is non-claimable expenditure to the extent (if any) to which it is incurred in breach of those conditions.

2 Subsection 40A(1) (after paragraph (d) of the definition of *decision of the Commission*)

Insert:

- (da) under paragraph 40BD(2)(d), to specify one or more conditions to which a group's approval as an approved joint venture or approved consortium is subject; or

3 Subsection 40BD(2)

Omit "A declaration", substitute "An approval".

4 Subsection 40BD(2)

Add at the end:

- ; and (d) specify the conditions (if any) to which the approval is subject.

5 Subsection 40BD(5)

Add at the end:

- ; or (d) a condition of the approval.

6 After subsection 40BD(5)

Insert:

- (5A) A reference in subsection (5) to changing a condition includes a reference to:

- (a) imposing a further condition; or

Schedule 4 Conditions of approval of joint ventures and consortia

(b) revoking a condition.

7 Subsection 40BE(3)

Repeal the subsection, substitute:

(3) In determining:

- (a) whether to approve an applicant as an approved joint venture or approved consortium; and
 - (b) the conditions (if any) to be specified in that approval;
- the Commission must have regard to the guidelines issued under section 42.

Schedule 5—Claims prepared by disqualified individuals

1 Before section 13

Insert:

Subdivision A—General

2 Before subsection 13(2A)

Insert:

- (2AB) If the claim was prepared for the claimant by or on behalf of an export market development grants consultant, the claim must name all the individuals who assisted in the preparation of the claim in an eligible capacity.

Note: *Eligible capacity* is defined by section 13B.

3 After section 13A

Insert:

Subdivision B—Disqualified individuals not to assist in the preparation of a claim in an eligible capacity

13B When an individual assists in the preparation of a claim in an eligible capacity

- (1) This section applies to a claim prepared for the claimant by or on behalf of an export market development grants consultant.
- (2) For the purposes of this Division, an individual assists in the preparation of the claim in an *eligible capacity* if:
 - (a) either:
 - (i) the individual works (whether or not in the capacity of an employee) on the preparation of the claim, where the work involves forming an opinion (whether formal or informal) about the application of the law to a matter dealt with by the claim; or
 - (ii) the individual directly or indirectly manages or supervises work mentioned in subparagraph (i); and
 - (b) the work, management or supervision, as the case may be, is performed by or on behalf of the export market development grants consultant.

13C Claim invalid if disqualified individual assists in preparation in an eligible capacity

- (1) This section applies if:
- (a) a claim is submitted to the Commission; and
 - (b) the claim was prepared for the claimant by or on behalf of an export market development grants consultant; and
 - (c) an individual assisted in the preparation of the claim in an eligible capacity; and
 - (d) the individual is disqualified at any time during the period beginning when the claim is submitted and ending immediately before the Commission determines whether the claimant is entitled to a grant.

Note 1: *Eligible capacity* is defined by section 13B.

Note 2: *Disqualified* is defined by section 13F.

- (2) The claim is taken, for the purposes of this Act (other than this section and sections 13D and 13E), not to have been submitted.

13D Commission must notify claimant that claim is invalid

As soon as practicable after the Commission becomes aware that section 13C applies to a claim, the Commission must give the claimant a written notice:

- (a) stating that the claim is taken not to have been submitted; and
- (b) setting out the effect of section 13E.

13E Claimant may submit fresh claim in special circumstances

Claimant without knowledge of individual's conviction/disqualification

- (1) If:
- (a) section 13C applies in relation to a claim; and
 - (b) at the time the claim was submitted:
 - (i) the individual concerned was disqualified; and
 - (ii) the claimant neither knew of, nor had reasonable grounds to suspect the existence of, the conviction that led to the individual being disqualified; and
 - (iii) the claimant neither knew, nor had reasonable grounds to suspect, that the individual was disqualified;
- the claimant may submit a fresh claim under subsection 13(1).

Individual's disqualification occurs after submission of claim

- (2) If:
- (a) section 13C applies in relation to a claim; and
 - (b) at the time the claim was submitted, the individual concerned was not yet disqualified;
- the claimant may submit a fresh claim under subsection 13(1).

Deadline for fresh claim

- (3) A fresh claim referred to in subsection (1) or (2) must be submitted before the latest of the following times:
- (a) the end of 90 days after the claimant receives the notice required by section 13D;
 - (b) in the case of a full-year claim or a balance-year claim—the end of 5 months after the end of the claim period;
 - (c) in the case of a half-year claim—the end of 6 months after the end of the claim period.

Normal section 13 deadline does not apply to fresh claim

- (4) Subsection 13(2A) does not apply to a fresh claim submitted in accordance with this section.

13F Disqualified individuals

- (1) For the purposes of this Subdivision, if an individual has been convicted (whether before or after the commencement of this section) of:
- (a) an offence against:
 - (i) a law of the Commonwealth, a State or a Territory; or
 - (ii) 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
 - (b) an offence against section 39 of this Act;
- the individual is *disqualified* at all times during the disqualification period.

Note: *Disqualification period* is defined by subsection (2).

- (2) For the purposes of this section, the *disqualification period* is the period starting when the individual was convicted and ending:
- (a) if the individual was not sentenced to imprisonment—5 years after the conviction; or

Schedule 5 Claims prepared by disqualified individuals

- (b) if the individual was sentenced to imprisonment—5 years after the individual's release from prison.
- (3) If a claim names an individual under subsection 13(2AB), the Commission may refuse to consider the claim unless the individual gives the Commission such written consents as the Commission requires to enable the individual's criminal records to be checked for the purposes of applying this Subdivision to the claim.
- (4) Where the Commission makes a claim form available:
 - (a) the form must contain an explanation of the effect of subsection (3); or
 - (b) the Commission must make available another document that contains an explanation of the effect of subsection (3).
- (5) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions for relieving persons from requirements to disclose spent convictions).

4 Application of amendments

The amendments made by this Schedule apply in relation to a claim submitted on or after whichever is the later of the following:

- (a) the day on which this Act receives the Royal Assent;
- (b) 1 July 1996.

Schedule 6—Expenditure relating to illegal activities

1 After section 11YA

Insert:

11YB Expenditure relating to illegal activities

- (1) Expenditure is non-claimable expenditure to the extent (if any) to which, in the Commission's opinion, the expenditure:
 - (a) is incurred in, or in connection with, the carrying out of an illegal activity; or
 - (b) promotes, aids or encourages an illegal activity; or
 - (c) is intended to promote, aid or encourage an illegal activity.
- (2) In subsection (1):

illegal activity means an act or omission that is an offence against:

 - (a) a law of the Commonwealth, a State or a Territory; or
 - (b) any other law.

2 Application of amendment

- (1) The amendment made by this Schedule applies in relation to a balance-year claim or a full-year claim in relation to the grant year beginning on 1 July 1995.
- (2) The amendment made by this Schedule applies in relation to a claim for grant in relation to a period beginning on or after 1 July 1996.

Schedule 7—Extended meaning of ordinarily employed

1 Subsection 3(1)

Insert:

ordinarily employed has a meaning affected by section 7.

2 After section 6

Insert:

7 Extended meaning of *ordinarily employed*

(1) If:

- (a) apart from this section, an individual is not ordinarily employed by another person; and
- (b) the individual performs work that benefits the other person, whether directly or indirectly; and
- (c) having regard to the following matters, the Commission is satisfied that the relationship between the individual and the other person may reasonably be regarded as equivalent to the relationship of employment for the purposes of this Act:
 - (i) whether the individual performs work at the premises of the other person;
 - (ii) whether the individual uses business facilities provided by the other person;
 - (iii) the extent to which the other person exercises control over the work performed by the individual;
 - (iv) whether the individual is a former employee of the other person or of an associate of the other person;
 - (v) whether the other person is the only person for whose benefit the individual performs work;
 - (vi) whether the individual is employed by a company or trustee that is closely associated with the individual or the individual's family;
 - (vii) whether it may reasonably be concluded that the relationship between the individual and the other person was entered into or maintained for the sole or dominant purpose of obtaining a grant under this Act;
 - (viii) any other relevant matters;

the Commission may determine that this Act has effect as if the individual were ordinarily employed by the other person.

(2) A determination has effect accordingly.

3 Subsection 11C(1)

Add at the end:

Note: *Ordinarily employed* has a meaning affected by section 7.

4 Subsection 11S(1)

Add at the end:

Note: *Ordinarily employed* has a meaning affected by section 7.

5 Application of amendments

- (1) The amendments made by this Schedule apply in relation to a balance-year claim or a full-year claim in relation to the grant year beginning on 1 July 1995.
- (2) The amendments made by this Schedule apply in relation to a claim for grant in relation to a period beginning on or after 1 July 1996.

Schedule 8—Registration of first-time claimants

1 After Division 2 of Part II

Insert:

Division 2A—Registration of first-time claimants

13H First-time claimants must be registered to be eligible for a grant

- (1) This section applies to a claim for grant in respect of the whole or the first 6 months of a particular grant year (the *first-time grant year*) if no previous grant year was an active grant year for the claimant.
- (2) However, this section does not apply to:
 - (a) an approved body; or
 - (b) an approved joint venture or approved consortium; or
 - (c) an approved trading house.
- (3) Grant is not payable to the claimant in respect of the claim unless:
 - (a) the claimant is registered under section 13I for the first-time grant year; and
 - (b) if the claim is a full-year claim—the claimant applied for registration during the first-time grant year; and
 - (c) if the claim is a first-half claim or a balance-year claim—the claimant applied for registration during the first 6 months of the first-time grant year.

13I Registration of first-time claimants

- (1) A person may apply to the Commission to be registered for a specified grant year.
- (2) The application must be in the form and manner approved by the Commission.
- (3) The application is taken not to have been made until:
 - (a) it has been received by the Commission; or
 - (b) it has been received on behalf of the Commission by an officer or employee of the Commission or by a person appointed by the Commission to receive applications under this section.

- (4) The Commission must register the applicant for the grant year.
- (5) As soon as practicable after registering the applicant, the Commission must give the applicant a written notice of the registration.

2 After paragraph 19(1)(d)

Insert:

- (da) treat any registration of the original owner under section 13I as a registration of the new owner; and

3 Subsection 40A(1) (after paragraph (a) of the definition of *decision of the Commission*)

Insert:

- (aa) under section 13I (which deals with registration of first-time claimants); or

4 Application of amendments

The amendments made by this Schedule apply in relation to a claim for grant in relation to a period beginning on or after 1 July 1996.

Schedule 9—Grants entry test for first-time claimants

1 Subsection 13(2AA)

Repeal the subsection.

2 Before Division 3 of Part II

Insert:

Division 2B—Grants entry test for first-time claimants

13J First-time claimants must pass grants entry test to be eligible for a grant

- (1) This section applies to a claim for grant in respect of the whole or the first 6 months of a particular grant year if no previous grant year was an active grant year for the claimant.
- (2) However, this section does not apply to:
 - (a) an approved body; or
 - (b) an approved joint venture or approved consortium; or
 - (c) an approved trading house.
- (3) Grant is not payable to the claimant in respect of the claim unless the claimant passes the grants entry test at such time during the period:
 - (a) beginning at the start of the grant year; and
 - (b) ending immediately before the Commission determines whether the claimant is entitled to a grant;as the Commission considers to be the appropriate time to apply the test.
- (4) In subsection (3):
grants entry test means the test formulated under section 13K.

13K Grants entry test

- (1) The Commission may make a written determination formulating a test, to be known as the *grants entry test*.
- (2) The test may confer a power on the Commission.
- (3) The test may require:
 - (a) an existing document to be given to the Commission; or
 - (b) a document to be prepared and given to the Commission.

- (4) Subsection (3) does not, by implication, limit subsection (1).
- (5) The Commission must give a free copy of the determination to any person who asks for a copy.
- (6) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

13L Commission may request information relevant to grants entry test

- (1) This section applies to a person for a grant year if the person is registered for the grant year under section 13I.
- (2) The Commission may, by written notice given to the person, request the person to give the Commission, within the period and in the manner specified in the notice, information that is relevant to whether the person passes the grants entry test formulated under section 13K.
- (3) The period specified in the notice must be at least 28 days. The notice must set out the effect of subsection (4).
- (4) If the person refuses or fails to comply with the request, grant is not payable to the person for the whole or the first 6 months of the grant year.
- (5) This section does not, by implication, limit subsection 13(4).

3 Application of amendments

- (1) The amendments made by this Schedule apply in relation to a balance-year claim or a full-year claim in relation to the grant year beginning on 1 July 1995, so long as the claim is submitted to the Commission after the commencement of this item.
- (2) The amendments made by this Schedule apply in relation to a claim for grant in relation to a period beginning on or after 1 July 1996.

*[Minister's second reading speech made in—
Senate on 21 May 1996
House of Representatives on 24 June 1996]*