



Export Expansion Grants Act 1978

Act No. 162 of 1978 as amended

[Note: This Act was repealed by Act No. 57 of 2006 on 21 June 2006]

This compilation was prepared on 26 May 2001
taking into account amendments up to Act No. 35 of 2001

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act relating to grants for the purpose of providing incentives for the expansion of exports

Part I—Preliminary

1 Short title *[see Note 1]*

This Act may be cited as the *Export Expansion Grants Act 1978*.

2 Commencement

This Act shall be deemed to have come into operation on 1 July 1977.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

authority or association means:

- (a) an authority constituted by a law of the Commonwealth or of a State or internal Territory;
- (b) a corporation, other than an authority referred to in paragraph (a), constituted for a public purpose by or under a law of the Commonwealth or of a State or internal Territory;
- (c) a co-operative association; or
- (d) any other body or association, corporate or unincorporated, representing the interests of an industry or of a substantial part of an industry.

claim means a claim under section 12, and ***claimant*** has a corresponding meaning.

Commission means the Australian Trade Commission established by section 7 of the *Australian Trade Commission Act 1985*.

company includes all bodies and associations, corporate or unincorporated, but does not include partnerships.

disposal includes sale, grant, assignment or supply.

eligible goods has the meaning given by section 4.

Section 3

eligible 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, in the opinion of the Commission, have, to a substantial extent, resulted from research or work performed in Australia; or
- (b) trade marks that, in the opinion of the Commission, were first used in Australia or have increased in significance or value by reason of their use in Australia.

eligible internal services means services that, in the opinion of the Commission, are services by way of the performance in Australia of work (including work by way of repair, maintenance, modification or overhaul) on goods that adds to the value of those goods, being goods:

- (a) imported into Australia with the intention of being subsequently exported;
- (b) brought to Australia for the purpose only of that work; or
- (c) brought to Australia for another purpose and kept in Australia temporarily for the purpose only of the performance of that work;

and owned by persons resident outside Australia.

eligible know-how means know-how that, in the opinion of the Commission, has to a substantial extent resulted from research or other work performed in Australia.

eligible services means services that are eligible services by virtue of regulations under subsection 22(4) or (4A).

excluded goods means:

- (a) minerals;
- (b) shorn wool in the grease;
- (c) bulk wheat, including bagged wheat;
- (d) sugar in any of its recognized commercial forms derived from sugar cane or sugar beet;
- (e) live-stock;
- (f) waste and scrap materials; and
- (g) goods that are excluded goods by virtue of regulations under subsection 22(2).

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 5.

export earnings increment has the meaning given by section 6.

grant means a grant under this Act.

grant year means the year commencing on 1 July 1977 or any of the 5 next succeeding years.

incentive grant entitlement has the meaning given by section 13.

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, of rights in relation to inventions or trade marks or of copyright in relation to works, designs or other things.

minerals includes:

- (a) minerals, other than petroleum, of a kind obtainable by mining operations, and products of such minerals obtained by:
 - (i) concentration;
 - (ii) any other treatment applied to the minerals before concentration or, in the case of minerals not requiring concentration, that would, if the minerals had required concentration, have been applied before the concentration; or
 - (iii) sintering or calcining;
- (b) the following products, namely:
 - (i) alumina;
 - (ii) pellets and other agglomerated forms of iron;
 - (iii) coke and coal; and

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- (iv) triuranium octoxide;
and other products obtained by the processes by which those products are produced, or processes carried on in connexion with those processes;
 - (c) petroleum and products of petroleum obtained by refining, treating or blending processes, including liquefied petroleum gas and liquid natural gas;
 - (d) materials of a kind obtainable by quarrying operations and products of such materials obtained by splitting or roughly squaring; and
 - (e) precious and semi-precious stones;
- but does not include Portland cement in the form of clinker.

person includes a company or a partnership.

processed, in relation to goods, does not include graded, packed or sorted.

resident of Australia and **resident outside Australia** have the respective meanings given by section 8.

year means a period of 12 months commencing on 1 July.

- (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.
- (4) For the purposes of this Act, a person shall be taken to have sold eligible goods if, and only if, the Commission is satisfied that, under the contract of sale, the property in the goods passed from that person to a buyer resident outside Australia.

4 Eligible goods

- (1) A reference in this Act to eligible goods shall be read as a reference to goods (other than excluded goods, goods referred to in subsection (2) or goods that are not to be taken to be eligible goods by virtue of a regulation under subsection 22(3)) that, in the

opinion of the Commission, have been manufactured, produced, assembled or processed in Australia, where:

- (a) not more than 50 per centum of the value of the goods is attributable to materials or parts not of Australian origin; or
 - (b) more than 50 per centum of the value of the goods is so attributable, but the Commission is satisfied that the goods should be treated as substantially of Australian origin.
- (2) For the purposes of subsection (1), where meat is exported to the United States of America or Canada by virtue of a quota allocated under a scheme prepared by the Australian Meat and Live-stock Corporation, that meat shall not be taken to be eligible goods.

5 Export earnings

- (1) Subject to this section, a reference in this Act to the export earnings of a person, in relation to a year, shall be read as a reference to the sum of:
- (a) in respect of eligible 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 eligible 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 eligible services outside Australia, less so much of the consideration as, in the opinion of the Commission, is paid or payable outside Australia in relation to those services;
 - (d) the amount or value of the consideration received by that person during that year for the disposal by that person at any time, to persons resident outside Australia, for use and enjoyment outside Australia, of eligible industrial property rights or of eligible know-how; and

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- (e) the amount or value of the consideration received by that person during that year for the supply by that person at any time of eligible internal services.
- (2) For the purposes of this section, the export earnings of a person shall not be taken to include any consideration in respect of the sale of goods, the supply of services or the disposal of rights or know-how by that person:
 - (a) at any time when he was not a resident of Australia; or
 - (b) otherwise than in the course of his carrying on a business the whole of which, or, in the opinion of the Commission, a substantial part of which, is carried on in Australia.
- (3) For the purposes of paragraph (1)(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.
- (4) For the purposes of paragraph (1)(c), where, in the opinion of the Commission, consideration received by a person for the supply by him of an eligible service outside Australia is paid or payable by him to a person resident outside Australia in relation to the supply of that service, that consideration shall be taken to be paid or payable outside Australia in relation to that service.
- (5) Where the Commission is satisfied that:
 - (a) a person has received compensation for a loss, or for the destruction of or damage to goods (including equipment used in the provision of a service), by a payment under a policy of insurance or otherwise; and

- (b) if that loss, destruction or damage had not occurred, that person would have received consideration that would have been export earnings of the person in a year;
- the Commission may treat the amount or value of that compensation as if it were export earnings of that person in that year.

6 Export earnings increment

Subject to this Act, a reference in this Act to the export earnings increment of a person, in relation to a grant year, shall be read as a reference to the amount by which the export earnings of that person in that year exceeds an amount equal to:

- (a) where the person had export earnings in each of the 3 immediately preceding years—one-third of the sum of his export earnings in those 3 years;
- (b) where the person had export earnings in only 2 of the 3 immediately preceding years—one-half of the sum of his export earnings in those 2 years;
- (c) where the person had export earnings in only one of the 3 immediately preceding years—one-half of the sum of:
 - (i) his export earnings in that one year; and
 - (ii) 67 per centum of his export earnings in the relevant grant year; or
- (d) where the person did not have any export earnings during the 3 immediately preceding years—67 per centum of his export earnings in the relevant grant year.

7 Calculation of export earnings increment

- (1) The regulations may provide that the export earnings increments of persons in relation to a grant year are to be calculated as if the export earnings, or the export earnings included in a specified class or specified classes of export earnings, of persons during a specified earlier year or specified earlier years had been higher or lower than they actually were by an amount calculated in a specified manner.
- (2) Where, upon the application of a claimant, the Commission is satisfied that:

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- (a) during a year or years, by reason of abnormal trading conditions, or other extraordinary circumstances, beyond the control of the claimant, the amount of the export earnings of the claimant for that year or those years is greater than it would otherwise have been; and
- (b) notwithstanding section 6 and regulations under subsection (1), the claimant is, by reason of that fact, unfairly disadvantaged to a substantial extent in the calculation of his export earnings increment in relation to a grant year;

the Commission may calculate that export earnings increment as if the export earnings of the claimant in the first-mentioned year or years were lower by an appropriate amount.

8 Residents of Australia

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 Commission 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 is declared by the Minister, on the advice of the Commission, by writing signed by him, to be a company to which this paragraph applies; or
- (d) a partnership which carries on business in Australia and exists by virtue of the law of a State or Territory;

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

9 Change in ownership of business etc.

Where the Commission is satisfied that:

- (a) at any time, including a time before 1 July 1977, 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, a change in the membership of a partnership, the acquisition of shares in the capital of a corporation or any other business arrangement, the same

business or undertaking or a business or undertaking that, in the opinion of the Commission, is or was substantially the same, is or was carried on by a different person or different persons;

the Commission 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 and as having had any export earnings resulting from the carrying on of that business or undertaking at that time.

10 Trust estates

Where any export earnings are received or receivable by the trustee of a trust estate, the Commission may treat so much of those earnings as, in the opinion of the Commission, 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 received, or as being receivable, by a beneficiary.

10A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part II—Grants

11 Grants

- (1) The Commission shall consider every claim duly made and determine whether the claimant has an incentive grant entitlement and, if so, the amount of that incentive grant entitlement.
- (2) Where the Commission determines that a claimant has an incentive grant entitlement, there is payable to the claimant a grant equal to the amount of the incentive grant entitlement so determined.

12 Claims for grants

- (1) A person desiring to obtain a grant shall submit a claim to the Commission.
- (2) Subject to the regulations, a claim shall be submitted in the form and manner approved by the Commission.
- (3) A claim relating to a grant year shall be submitted within 5 months after the end of that year, or within such further time as the Commission allows.
- (4) A claim shall be deemed not to have been submitted until it has been received by the Commission or 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 claims under this Act.
- (5) The Commission may refuse to consider a claim unless the claimant supplies such further information, or makes available to the Commission such books, records or documents, as the Commission specifies, being information, books, records or documents that the Commission requires for the performance of its functions under this Act.

13 Incentive grant entitlements

Subject to this Act, the incentive grant entitlement of a claimant in relation to a grant year is an amount equal to:

- (a) where his export earnings increment for that year does not exceed \$500,000—7.5% of that increment;
- (b) where his export earnings increment for that year exceeds \$500,000 but does not exceed \$5,000,000—the sum of \$37,500 and an amount equal to 5% of the difference between that increment and \$500,000;
- (c) where his export earnings increment for that year exceeds \$5,000,000 but does not exceed \$10,000,000—the sum of \$262,500 and an amount equal to 2.5% of the difference between that increment and \$5,000,000; or
- (d) where his export earnings increment for that year exceeds \$10,000,000—the sum of \$387,500 and an amount equal to 1.25% of the difference between that increment and \$10,000,000.

14 Persons not eligible for grants

Grants are not payable to:

- (a) a State or the Northern Territory; or
- (b) an authority or association declared by the regulations to be a body to which grants are not payable.

Part III—Administration

15 Australian Trade Commission

- (1) The functions and powers of the Commission include the functions and powers conferred on it by this Act.
- (2) For the purposes of subsection (1), Parts II, III and VI of the *Australian Trade Commission Act 1985* have effect as if:
 - (a) references in those Parts to that Act (other than references to particular provisions of that Act) include references to this Act; and
 - (b) references in those Parts to claims under the *Export Market Development Grants Act 1974* include references to claims under this Act.

Part IV—Miscellaneous

16 Adjustment of amounts

- (1) Where the Commission is of the opinion that an act or thing (including the making of an agreement, arrangement or payment, the forming of a corporation or partnership or the distribution of income or activities as between different persons or different years) has been done that, if the powers of the Commission under this section were not exercised, would result in an increase in the total of the amounts paid as grants without there being a corresponding increase in the total of the amounts of the export earnings of persons in the grant years, the Commission, to the extent that it thinks it necessary to do so to prevent or limit that result, may, for the purposes of this Act, disregard or adjust all or any of the following amounts, that is to say, the amount of the export earnings, the amount of the export earnings increment, or the amount of the incentive grant entitlement, of a claimant for a year, being an amount that, in the opinion of the Commission, has been affected by, or is an amount of anything resulting from, that act or thing.
- (2) The power of the Commission under subsection (1) extends to adjusting the amount of the incentive grant entitlement of a person notwithstanding that a grant in respect of the amount has been paid, and where the amount of the incentive grant entitlement of a person is reduced by such an adjustment after the payment of a grant in respect of it, that person shall be indebted to the Commonwealth in an amount equal to the difference between the grant paid and the adjusted amount of the entitlement, and the amount of that indebtedness may be:
 - (a) deducted from moneys payable to that person under this Act; or
 - (b) recovered from that person by the Commonwealth in a court of competent jurisdiction.

17 Review of decisions of Commission

- (1) In this section:
-

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decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

decision of the Commission means a decision of the Commission under this Act in connexion with a claim.

- (2) A claimant affected by a decision of the Commission and dissatisfied with the decision may, by notice in writing given to the Commission within a period of 30 days after the date on which the decision first comes to the notice of the claimant, or within such further period as the Commission allows, request the Commission to reconsider the decision.
- (3) There shall be set out in the request the ground on which the request is made.
- (4) Upon receipt of the request, the Commission shall reconsider the decision and may either confirm the decision or vary the decision in such manner as it thinks fit.
- (5) The Commission shall, by notice in writing to the claimant, inform the claimant of the result of its reconsideration of the decision.
- (6) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commission that, on or after a date to be fixed by Proclamation, have been confirmed or varied under subsection (4).

19 Recovery of overpayments

- (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, that person shall be indebted to the Commonwealth in an amount equal to the amount so paid, and the amount of that indebtedness may be:
 - (a) deducted from moneys payable to that person under this Act; or
 - (b) recovered from that person by the Commonwealth in a court of competent jurisdiction.
- (2) For the purposes of subsection (1), a certificate purporting to be signed by the Managing Director of the Commission, or by a

person for the time being acting in the office of Managing Director of the Commission, 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.

20 Reports

- (1) The Commission 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.
- (2) A report under subsection (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 Commission 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.

21 Grant moneys to be appropriated

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

22 Regulations

- (1) 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.

Section 22

- (2) The regulations may declare that goods of a specified kind are excluded goods.
- (3) The regulations may declare that, for the purposes of this Act, goods of a specified kind exported to a specified country or exported in particular circumstances, or both, shall not be taken to be eligible goods.
- (4) The regulations may declare that services of a specified kind are eligible services.
- (4A) The regulations may declare that services by way of provision of eligible goods under an agreement for lease or hire of those goods are eligible services.
- (5) The regulations may declare that an authority or association is a body to which grants are not payable.
- (6) Regulations referred to in subsection (2), (3) or (5) made before 1 December 1978 may be expressed to take effect from the date of commencement of this Act.

Table of Acts**Notes to the *Export Expansion Grants Act 1978*****Note 1**

The *Export Expansion Grants Act 1978* as shown in this compilation comprises Act No. 162, 1978 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 24 November 2000 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Export Expansion Grants Act 1978</i>	162, 1978	28 Nov 1978	1 July 1977	
<i>Commonwealth Functions (Statutes Review) Act 1981</i>	74, 1981	18 June 1981	Part X (ss. 178–181): Royal Assent (a)	Ss. 180(2) and 264
<i>Export Grants Acts Amendment Act 1981</i>	119, 1981	9 Sept 1981	1 Feb 1982 (<i>see Gazette</i> 1982, No. S18)	—
<i>Australian Trade Commission (Transitional Provisions and Consequential Amendments) Act 1985</i>	187, 1985	16 Dec 1985	Part V (ss. 23–31): (b)	Ss. 28(2), 30 and 31
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001</i>	35, 2001	28 Apr 2001	26 May 2001	S. 4 [see Table A]

Act Notes

- (a) The *Export Expansion Grants Act 1978* was amended by Part X (sections 178–181) only of the *Commonwealth Functions (Statutes Review) Act 1981*, subsection 2(1) of which provides as follows:
- (1) Parts I, IV, IX, X, XI, XII, XIII, XV, XVII (other than sections 220, 221, 222, 223, 225, 226, 227, 228 and 230), XX, XXI, XXII and XXIII shall come into operation on the day on which this Act receives the Royal Assent.
- (b) The *Export Expansion Grants Act 1978* was amended by Part V (sections 23–31) only of the *Australian Trade Commission (Transitional Provisions and Consequential Amendments) Act 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act shall come into operation on the commencing day.

Section 3 of the *Australian Trade Commission Act 1985* defines **commencing day** as the day fixed by Proclamation for the purposes of subsection 2(2) of that Act. The date fixed was 6 January 1986 (see *Gazette* 1985, No. S551).

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3.....	am. No. 74, 1981; No. 187, 1985
Ss. 4, 5.....	am. No. 187, 1985
Ss. 7–10.....	am. No. 187, 1985
S. 10A.....	ad. No. 35, 2001
Ss. 11, 12.....	am. No. 187, 1985
S. 13.....	rs. No. 74, 1981
S. 15.....	rs. No. 187, 1985
Ss. 16, 17.....	am. No. 187, 1985
S. 18.....	am. No. 187, 1985 rep. No. 137, 2000
S. 19.....	am. No. 119, 1981; No. 187, 1985
S. 20.....	am. No. 187, 1985
S. 22.....	am. No. 74, 1981

Table A

Table A

Application, saving or transitional provisions

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
-

Table A

Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001 (No. 35, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.