



Export Market Development Grants Amendment Act 1982

No. 157 of 1982

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

[Assented to 31 December 1982]

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

Short title, &c.

1. (1) This Act may be cited as the *Export Market Development Grants Amendment Act 1982*.

(2) The *Export Market Development Grants Act 1974*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(2) The amendments made by sub-sections 3 (1) and 4 (2) and sections 5, 6 and 7 shall be deemed to have taken effect on 1 July 1982.

(3) The amendment made by sub-section 4 (1) shall be deemed to have taken effect on 6 December 1978.

(4) Sub-sections 4 (3) and 5 (2) shall come into operation on 1 July 1983.

Interpretation

3. (1) Section 3 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “Government sponsored promotion”; and
- (b) by omitting “15” from the definition of “grant entitlement” in sub-section (1) and substituting “16”.

(2) Section 3 of the Principal Act is further amended by omitting “8” from the definition of “grant year” in sub-section (1) and substituting “13”.

Eligible expenditure

4. (1) Section 4 of the Principal Act is amended by omitting from sub-paragraph (2) (f) (ii) “(1) (d)” and substituting “(1) (h)”.

(2) Section 4 of the Principal Act is further amended—

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

“(c) in the case of a person who is an approved body—

- (i) the sale for export, or export and sale, of eligible goods manufactured, produced, assembled or processed in Australia;
- (ii) the supply, by other persons, for reward, in the course of their carrying on business in Australia, of eligible services outside Australia or eligible internal services; or
- (iii) the disposal, by other persons, for reward, in the course of their carrying on business in Australia, to persons resident outside Australia, for use and enjoyment outside Australia, of eligible industrial property rights owned by those other persons or of eligible know-how owned by those other persons;”;

- (b) by inserting after paragraph (2) (c) the following paragraphs:

“(ca) expenses that, in the opinion of the Board, are directly attributable to the preparation or submission of a tender or quotation for the supply by the claimant of eligible tourist services in Australia to persons resident outside Australia, including expenses that, in the opinion of the Board, are directly attributable to the making of investigations and the preparation of information, estimates or other material for the purposes of the submission by the claimant of such a tender or quotation;

“(cb) expenses by way of discounts allowed by the claimant in respect of travel, accommodation, sustenance or entertainment in respect of or in relation to a visit from a place outside Australia to Australia by a person resident outside Australia, (other than a prescribed agent of the claimant) being a person who the Board is satisfied performs

a function in relation to the tourist industry in a country other than Australia that includes the promotion in that country of the supply of eligible tourist services in Australia to persons resident outside Australia;”;

- (c) by inserting in paragraph (2) (g) “or discounts to which paragraph (cb) is applicable” after “fares”;
- (d) by adding at the end of paragraph (2) (l) “other than discounts to which paragraph (cb) is applicable”;
- (e) by omitting from sub-section (2A) all the words after paragraph (b) and substituting the following words and paragraphs:

“the Board shall, for the purposes of this section—

- (c) in a case where those services are not prescribed services in the construction industry—treat that expenditure as being reduced by an amount that the Board, having regard to the extent to which the consideration for those services is consideration referred to in paragraph (b), considers appropriate; or
- (d) in a case where those services are prescribed services in the construction industry—
 - (i) if less than 20% but not less than 10% of the consideration for those services is consideration that the Board is satisfied has accrued or will accrue, or, if those services were supplied, would accrue, to a person or persons resident, and carrying on business, in Australia—treat that expenditure as being reduced by an amount equal to 25% of that expenditure;
 - (ii) if less than 10% but not less than 5% of the consideration for those services is consideration that the Board is satisfied has accrued or will accrue, or, if those services were supplied, would accrue, to a person or persons resident, and carrying on business, in Australia—treat that expenditure as being reduced by an amount equal to 50% of that expenditure; or
 - (iii) if less than 5% of the consideration for those services is consideration that the Board is satisfied has accrued or will accrue, or, if those services were supplied, would accrue, to a person or persons resident, and carrying on business, in Australia—disregard that expenditure”;
- (f) by adding after sub-section (2C) the following sub-section:

“(2D) For the purposes of this section, travel, accommodation, sustenance or entertainment provided free of charge shall be taken to have been sold at a discount of 100%.”;

- (g) by inserting in sub-section (5) “(other than expenses by way of discounts to which paragraph (2) (cb) is applicable)” after “amount of any expenditure”;
- (h) by omitting sub-section (7A) and substituting the following sub-sections:

“(7A) Where a discount is allowed by a claimant in relation to a sale of travel, accommodation, sustenance or entertainment to which paragraph (2) (cb) is applicable, the eligible expenditure of the claimant does not include an amount equal to one-half of the amount of the expenditure by way of the discount.

“(7B) Where the sum of—

- (a) the amount of any expenditure by way of a discount allowed in relation to travel, accommodation, sustenance or entertainment to which paragraph (2) (cb) is applicable; and
- (b) the amount of the price paid for that travel, accommodation, sustenance or entertainment,

exceeds the amount that, in the opinion of the Board, would reasonably be expected to be incurred for the purpose or purposes for which that travel, accommodation, sustenance or entertainment was sold, sub-section (7A) shall, if the Board so directs, have the effect that it would have if—

- (c) in a case where that excess is greater than, or equal to, that expenditure—there had been no such expenditure; or
- (d) in any other case—that expenditure were reduced by the amount of the excess.”; and

- (j) by adding after the definition of “prescribed associate” in sub-section (8) the following definition:

“‘prescribed services in the construction industry’ means civil engineering services or building services supplied by way of the construction, alteration or repair (other than routine maintenance) of—

- (a) a building or other improvement to land (including submerged land); or
- (b) a floating structure (other than a vessel of any description designed for use in navigation),

being services the consideration for which is not less than \$200,000;”.

- (3) Section 4 of the Principal Act is further amended—

- (a) by omitting paragraph (2) (g) and substituting the following paragraph:

“(g) expenses in respect of travel, accommodation, sustenance or entertainment in respect of or in relation to a visit by any person from a place (whether within or outside Australia) to

another place or other places (whether within or outside Australia) other than—

- (i) fares;
 - (ii) expenses to which paragraph (cb) is applicable;
 - (iii) expenses in respect of accommodation, sustenance or entertainment within Australia in respect of or in relation to a visit by a person, not being the claimant or a prescribed agent of the claimant or of the association ordinarily employed or carrying out duties in Australia, from a place outside Australia to Australia; or
 - (iv) expenses in respect of accommodation, sustenance or entertainment outside Australia in respect of or in relation to a visit by a person who is ordinarily carrying out the duties of a sales representative of the claimant outside Australia from a place outside Australia to another place or other places outside Australia;”;
- (b) by omitting from sub-section (4) “travel outside Australia at the same time” and substituting “are, at any time, both or all travelling outside Australia”; and
- (c) by omitting from sub-section (4) all the words after paragraph (c).

5. (1) Section 6 of the Principal Act is repealed and the following section is substituted:

Minimum amount to be spent on eligible tourist services

“6. (1) Where the eligible expenditure incurred by a person during a grant year in relation to the supply of eligible tourist services, not including expenditure incurred by way of fares, is less than \$5,000—

- (a) the Board shall, for the purposes of this Act, disregard so much of that expenditure as was incurred otherwise than in relation to recognized tourism promotions; and
- (b) section 15 has effect, in relation to that grant year, as if the reference in sub-section (1) of that section to paragraph 4 (1) (f) or (g) were a reference to that paragraph only in so far as it relates to eligible tourist services that are the subject of recognized tourism promotions.

“(2) The Secretary to the Department of Trade and Resources may—

- (a) on application in writing to do so being made to him by—
 - (i) the Australian Tourist Commission;
 - (ii) a State;
 - (iii) the Northern Territory; or
 - (iv) the Secretary to the Department of the Capital Territory; or
- (b) on his own motion,

by notice published in the *Gazette*, declare a tourism promotion to be, or to have been, a recognized tourism promotion for the purposes of this section.

“(3) Where the Secretary to the Department of Trade and Resources makes a decision under sub-section (2) rejecting an application, he shall cause to be published in the *Gazette* a notice setting out that decision.

“(4) A notice published in the *Gazette* relating to a decision under sub-section (2) shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with the decision to which the notice relates, make application to the Administrative Appeals Tribunal for review of the decision.

“(5) Any failure to comply with the requirements of sub-section (4) in relation to a decision does not affect the validity of the decision.

“(6) The Secretary to the Department of Trade and Resources, in exercising his powers under sub-section (2) to declare a tourism promotion to be, or to have been, a recognized tourism promotion for the purposes of this section, shall have regard to all matters that he considers relevant, including, but without limiting the generality of the foregoing, the following matters:

- (a) whether or not the tourism promotion has been, or is likely to be—
 - (i) effective; and
 - (ii) appropriate for or in relation to persons to whom sub-section (1) is, or is likely to be, applicable;
- (b) whether or not the declaration is likely to prejudice Australia's international relations;
- (c) the activities or likely activities of the Australian Tourist Commission.

“(7) The Secretary to the Department of Trade and Resources may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of that Department all or any of his powers under this section other than this power of delegation.

“(8) A power so delegated, when exercised by the delegate, shall, for the purposes of this section, be deemed to have been exercised by the Secretary to the Department of Trade and Resources.

“(9) A delegation under this section does not prevent the exercise of a power by the Secretary to the Department of Trade and Resources.

“(10) In this section, ‘tourism promotion’ means the promotion of either of the acts or things referred to in paragraphs 4 (1) (f) or (g) by means of—

- (a) the doing of an act outside Australia;
- (b) the export of a publication that is published in Australia and is principally intended for distribution outside Australia; or
- (c) the production and issue, outside Australia, of a supplement to a newspaper or periodical that is produced and distributed outside Australia.”.

(2) Section 6 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “, or to have been,”;

- (b) by omitting from sub-section (6) “, or to have been,”; and
- (c) by omitting from paragraph (6) (a) “has been, or”.

Persons not eligible for grants

6. Section 14 of the Principal Act is amended by omitting sub-sections (3), (4) and (5) and substituting the following sub-sections:

“(3) Where a person, other than an approved body, received, or became entitled to receive, grants in respect of any 3 or more grant years preceding a particular grant year, a grant is not payable to him in respect of that last-mentioned grant year unless—

- (a) the amount of his export earnings in that last-mentioned grant year exceeds \$25,000; or
- (b) in a case where the amount of his export earnings in that last-mentioned grant year does not exceed \$25,000—the amount of his export earnings in that last-mentioned grant year in respect of eligible industrial property rights, eligible know-how or a combination of eligible industrial property rights and eligible know-how exceeds \$10,000.

“(4) Subject to sub-sections (5), (6), (7) and (8), the reference in sub-section (3) 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—the free on board value 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—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 Board, 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
- (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.

“(5) For the purposes of sub-section (4), 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 Board, a substantial part of which, is carried on in Australia.

“(6) For the purposes of paragraph (4) (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.

“(7) For the purposes of paragraph (4) (c), where, in the opinion of the Board, 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.

“(8) Where the Board 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 Board may treat the amount or value of that compensation as if it were export earnings of that person in that year.

“(9) A reference in sub-section (3) to a grant in respect of a grant year does not include a reference to a grant in respect of or in relation to—

- (a) eligible expenditure incurred during that grant year in relation to the supply of eligible tourist services; and
- (b) a promotional visit allowance taken into account for the purpose of calculating the grant entitlement of a claimant in that grant year, being a promotional visit allowance in relation to a visit undertaken primarily and principally for the purpose of creating or seeking opportunities, or creating or increasing demand, for an act or thing referred to in paragraph 4 (1) (f) or (g).”.

7. (1) Sections 15 and 16 of the Principal Act are repealed and the following sections are substituted:

Promotional visit allowances

“15. (1) Where the Board is satisfied—

- (a) that a claimant or a prescribed agent of a claimant ordinarily employed or carrying out duties in Australia commenced, in the grant year commencing on 1 July 1982 or in a subsequent grant year, a visit from a place in Australia to a place or places outside Australia;
- (b) that the visit was undertaken primarily and principally for the purpose of creating or seeking opportunities, or creating or increasing demand, for any act or thing referred to in paragraph 4 (1) (a), (b), (c), (d), (e), (f), (g), (h) or (j);
- (c) that not more than 120 whole days elapsed during the visit; and
- (d) with respect to such other matters (if any) as are prescribed,

the promotional visit allowance in relation to that visit to be taken into account for the purposes of calculating the grant entitlement of the claimant in respect of that grant year is—

- (d) in a case where less than 10 whole days elapsed during the visit— an amount equal to the product of \$50 and the number of whole days that elapsed during the visit; or
- (e) in any other case—\$500.

“(2) For the purposes of sub-section (1), the number of whole days that elapsed during a visit shall be calculated from the time the visit commenced until the time of arrival at its first port of call, or airport, in Australia, of the vessel or aircraft on which the person undertaking the visit returns to Australia.

“(3) Where 2 or more persons who are relatives of each other are, at any time, both or all outside Australia on visits in respect of each of which a promotional visit allowance could, but for this sub-section, be taken into account for the purpose of calculating the grant entitlement of the claimant in any grant year, that promotional visit allowance is not to be so taken into account in respect of—

- (a) if the claimant himself is one of those persons—the visit of any of those persons (other than the claimant) who is not a permanent employee of the claimant;
- (b) if the claimant himself is not one of those persons but those persons include a permanent employee of the claimant—the visit of any of those persons who is not a permanent employee of the claimant; or
- (c) if none of those persons is either the claimant himself or a permanent employee of the claimant—the visit of any of those persons other than such one of them as the claimant nominates by notice in writing to the Board.

“(4) For the purposes of this section, a visit shall be taken to have commenced at the time when the vessel or aircraft on which the person

undertaking the visit was travelling departed from its last port of call or airport in Australia.

“(5) In this section—

‘permanent employee’, in relation to a claimant, has the same meaning as in section 4;

‘prescribed agent’ has the same meaning as in section 4;

‘relative’, in relation to a person, has the same meaning as in section 4;

‘whole day’ means a period of 24 hours.

Grant entitlements

“16. Subject to this Act, the grant entitlement of a claimant, in relation to a grant year, is whichever is the lesser of—

(a) the sum of—

(i) 70% of the eligible expenditure incurred by the claimant during that grant year; and

(ii) the promotional visit allowance or allowances of the claimant that, in accordance with section 15, may be taken into account for the purpose of calculating the grant entitlement of the claimant in respect of that grant year; or

(b) \$200,000.”.

(2) Notwithstanding the repeal of sections 15 and 16 of the Principal Act by sub-section (1), those sections continue to apply in relation to grant years before the grant year that commenced on 1 July 1982.

8. Section 31 of the Principal Act is repealed and the following section is substituted:

Disclosure of interest by members

“31. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

“(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, unless the Minister otherwise determines—

(a) be present during any deliberation of the Board with respect to that matter; or

(b) take part in a decision of the Board with respect to that matter.”.

Delegation

9. (1) Section 33 of the Principal Act is amended by omitting from sub-section (1) “the Chairman, to the Executive Member” and substituting “a member of the Board”.

(2) A delegation under sub-section 33 (1) of the Principal Act of a power to the Chairman or to the Executive Member of the Export Development Grants Board in force immediately before the commencement of this section continues in force as if it were a delegation made under sub-section 33 (1) of the Principal Act as amended by this section.

10. After section 40 of the Principal Act the following section is inserted:

Review of decisions of Secretary to Department of Trade and Resources

“40AAA. (1) In this section, ‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

“(2) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Secretary to the Department of Trade and Resources under sub-section 6 (2).”.

Review of decisions of Board

11. Section 40A of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) The Board shall, by notice in writing to a claimant affected by a decision of the Board, inform the claimant of the decision of the Board.”.

12. After section 40A of the Principal Act the following section is inserted:

Statements to accompany notification of decisions

“40AA. (1) Where the Board makes a decision of the kind referred to in sub-section 40A (1A) and gives to the claimant notice in writing of the decision, that notice shall include a statement to the effect that—

- (a) the claimant may, if he is dissatisfied with the decision, seek a reconsideration of the decision by the Board in accordance with sub-section 40A (2); and
- (b) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with the decision made by the Board upon that reconsideration, make application to the Administrative Appeals Tribunal for review of the last-mentioned decision.

“(2) Where the Board makes a decision under sub-section 40A (4) and gives to the claimant notice in writing of the decision, that notice shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with the decision to which the notice relates, make application to the Administrative Appeals Tribunal for review of the decision.

“(3) Any failure to comply with the requirements of sub-section (1) or (2) in relation to a decision does not affect the validity of the decision.”.

Export Market Development Grants Amendment No. 157, 1982

NOTE

1. No. 154, 1974, as amended. For previous amendments, see Nos. 36 and 192, 1978; and Nos. 74 and 119, 1981.