



Export Market Development Grants Amendment Act 1985

No. 110 of 1985

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Commencement

PART II—AMENDMENTS OF THE EXPORT MARKET DEVELOPMENT GRANTS ACT 1974

3. Principal Act
4. Title
5. Interpretation
6. Insertion of new section after section 3—
 - 3A. Export earnings
7. Eligible expenditure
8. Repeal of section 6
9. Insertion of new section before section 11—
 10. Determinations in relation to the Republic of South Africa
10. Residents of Australia
11. Claims for grants
12. Persons not eligible for grants
13. Repeal of section 15
14. Grant entitlements
15. Repeal of section 19 and substitution of new section—
 19. Change in ownership of business, &c.
16. Secrecy
17. Repeal of section 38 and substitution of new section—
 38. Adjustment of amounts
18. Offences

TABLE OF PROVISIONS—continued

Section

- 19. Insertion of new section after section 39—
39A. Convicted persons to repay grants, & c.
- 20. Repeal of section 40AAA
- 21. Declaration of approved bodies
- 22. Insertion of new section after section 40B—
40C. Collection of statistics relating to operation of Act
- 23. Regulations
- 24. Export earnings earned between 20 May 1985 and 30 June 1985
- 25. Transitional

PART III—AMENDMENTS OF THE EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT ACT 1982

- 26. Principal Act
- 27. Commencement



Export Market Development Grants Amendment Act 1985

No. 110 of 1985

An Act to amend the *Export Market Development Grants Act 1974* and the *Export Market Development Grants Amendment Act 1982*, and for related purposes

[Assented to 16 October 1985]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Export Market Development Grants Amendment Act 1985*.

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 sections 4 to 8 (inclusive), 10, 12 to 15 (inclusive), 17, 19 and 21 shall be deemed to have taken effect on 20 May 1985.

(3) The amendment made by section 27 shall be deemed to have taken effect on 1 July 1982.

**PART II—AMENDMENTS OF THE EXPORT MARKET
DEVELOPMENT GRANTS ACT 1974**

Principal Act

3. The *Export Market Development Grants Act 1974*¹ is in this Part referred to as the Principal Act.

Title

4. The title to the Principal Act is amended by omitting “or for the Attraction of Tourists and other Visitors to Australia”.

Interpretation

5. Section 3 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “approved tourist body”;
- (b) by inserting after the definition of “eligible industrial property rights” in sub-section (1) the following definition:
“‘eligible internal educational services’ means services that are eligible internal educational services by virtue of regulations under sub-section 43 (3);”;
- (c) by omitting from sub-section (1) the definition of “eligible tourist services”;
- (d) by omitting from sub-section (1) the definition of “grant year” and substituting the following definition:
“‘grant year’ means—
 - (a) the year commencing on 1 July 1974 or any of the 9 next succeeding years;
 - (b) the period commencing on 1 July 1984 and ending on 19 May 1985;
 - (c) the period commencing on 20 May 1985 and ending on 30 June 1986; or
 - (d) the year commencing on 1 July 1986 or any of the 3 next succeeding years;”;
- (e) by omitting from sub-section (1) the definition of “tourist body”;
- (f) by inserting in sub-section (4) “, eligible internal educational services” after “services outside Australia”; and
- (g) by adding at the end the following sub-sections:

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

“(6) For the purposes of this Act, but subject to sub-sections (7) and (8), expenditure shall be taken to have been incurred only at the time when the amount of that expenditure is acquitted.

“(7) Where an amount was acquitted during a grant year for goods or services and those goods or services were not provided before the end of that grant year, the Board may declare that this sub-section applies to the amount so acquitted, and, where the Board so declares, that amount shall be treated as if it had been acquitted only when the goods or services were provided.

“(8) Where an amount was acquitted during a grant year for goods or services and a part of those goods or services was not provided before the end of that grant year, the Board may declare that this sub-section applies to the part of the amount so acquitted that relates to that part of those goods and services, and, where the Board so declares, that part of the amount so acquitted shall be treated as if it had been acquitted only when that part of those goods or services was provided.

“(9) For the purposes of this section, but subject to the operation of sub-sections (7) and (8), an amount shall be taken to have been acquitted at the time when—

- (a) that amount is paid by one person to another person; or
- (b) that amount is, in an account rendered by one person to another person, set off by the person rendering the account against money owing by that other person to the person rendering the account.

“(10) A consortium or joint venture shall not be taken to be a partnership for the purposes of this Act unless the agreement establishing the consortium or joint venture is effective, under the law relating to partnerships in the place where the agreement is made, to establish a partnership between the parties to the consortium or joint venture.”.

6. After section 3 of the Principal Act the following section is inserted:

Export earnings

“3A. (1) A reference in this Act to the export earnings of a person, in relation to a grant year, shall be read, subject to the operation of this section, 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 that person during that grant 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 that person during that grant 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 grant 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 grant 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;
- (e) the amount or value of the consideration received by that person during that grant year for the supply by that person at any time of eligible internal services; and
- (f) 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 educational services.

“(2) For the purposes of sub-section (1), 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 that person was not a resident of Australia; or
- (b) otherwise than in the course of the carrying on by that person of a business the whole of which, or, in the opinion of the Board, 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 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 Board, consideration received by a person for the supply by that person of an eligible service outside Australia is paid or payable by that person 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 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 grant year,

the Board may treat the amount or value of that compensation as if it were export earnings of that person in that grant year.”.

Eligible expenditure

7. Section 4 of the Principal Act is amended—

- (a) by omitting paragraphs (1) (f) and (g) and substituting the following paragraph:

“(f) the supply, by that person, for reward, in the course of carrying on business in Australia, of eligible internal educational services to persons resident outside Australia;”;

- (b) by inserting in paragraph (2) (c) “, eligible internal educational services” after “eligible services”;
- (c) by omitting paragraphs (2) (ca) and (cb);
- (d) by omitting from paragraph (2) (d) “or” (last occurring);
- (e) by inserting after paragraph (2) (e) the following word and paragraph:

“; or (ea) expenses by way of premiums paid for insurance against costs likely to be incurred in respect of the protection of eligible industrial property rights obtained under the laws of countries outside Australia,”;

- (f) by omitting from paragraph (2) (f) “or (e)” and substituting “, (e) or (ea)”;
- (g) by omitting sub-paragraph (2) (g) (ii);
- (h) by omitting from sub-paragraph (2) (g) (iv) “ordinarily”;
- (j) by omitting from paragraph (2) (1) “other than discounts to which paragraph (cb) is applicable”;
- (k) by omitting from paragraph (2) (m) “, or an approved tourist body,”;
- (m) by inserting after sub-section (2) the following sub-sections:

“(2AA) Notwithstanding anything to the contrary in sub-section (2), only 65% of any expenses that are incurred in respect of first class fares shall be treated as expenditure for the purposes of this section.

“(2AB) Any expenditure by way of expenses of, contributions towards expenses of, or payments made to, an agent other than a prescribed agent for the purposes of the undertaking by that agent of services of a kind referred to in sub-section (2) shall not be treated as expenditure for the purposes of this section unless the expenses incurred by that agent in respect of accommodation, sustenance and entertainment in connection with the provision by

that agent of those services are identified in any account rendered by or on behalf of the agent in respect of those services.”;

- (n) by omitting from sub-section (2C) “or other partnership resident in Australia” and substituting “all the members of which are residents of Australia,”;
- (o) by omitting sub-section (2D);
- (p) by omitting from paragraph (3) (a) “a approved body, an approved tourist body” and substituting “an approved body”;
- (q) by omitting paragraph (3) (b) and substituting the following paragraph:
 - “(b) the Board is satisfied that those moneys have been or will be applied—
 - (i) by way of expenditure within the meaning of this section; and
 - (ii) in a manner such that, had they been, or were they to be, so applied by the claimant, those moneys would be eligible expenditure,”;
- (r) by omitting sub-section (5) and substituting the following sub-sections:

“(5) Where the Board is of the opinion that the amount of any expenditure that is claimed to constitute or form part of any eligible expenditure may exceed the amount that would reasonably be expected to be payable for the purpose or purposes for which the expenditure was incurred, the Board may notify the claimant, in writing, that it is of that opinion and of its reasons for being of that opinion and request the claimant, within the period specified by the Board in the notice, to provide information to the Board to establish that the amount of the expenditure was reasonably payable for the purpose or purposes for which the expenditure was incurred.

“(5A) Where a claimant, upon receipt of a notice under sub-section (5), fails, within the period specified in the notice, to provide information that, to the satisfaction of the Board, establishes that the amount or a part of the amount of the expenditure to which the notice relates was reasonably payable for the purpose or purposes for which the expenditure was incurred, the Board may, for the purposes of this Act, by determination in writing, treat the eligible expenditure of the claimant as being reduced by that amount or that part of that amount.

“(5B) Where—

- (a) a claimant incurs expenses in respect of the provision of a service of a kind referred to in paragraph (2) (b), (c), (d), (e) or (ea); and

(b) those expenses are payable to—

- (i) a prescribed associate (other than a person referred to in sub-paragraph (ii), (iii) or (iv)), being a resident of Australia;
- (ii) a director of the claimant, where the claimant is a company;
- (iii) a director of an associated company; or
- (iv) an associated company carrying on business in Australia,

those expenses shall be taken, for the purposes of that paragraph, to be, in the opinion of the Board, directly attributable to the provision of that service, to the extent only that those expenses are, in the opinion of the Board, expenses attributable to the actual cost of labour and materials involved in the provision of that service.”;

- (s) by omitting from paragraph (6) (a) “eligible tourist services,” and substituting “eligible internal educational services,”;
- (t) by omitting from sub-section (7) “year” (second occurring) and substituting “grant year”;
- (u) by omitting sub-sections (7A) and (7B); and
- (v) by omitting from sub-section (8) the definition of “regional tourist body”.

Repeal of section 6

8. Section 6 of the Principal Act is repealed.

9. Before section 11 of the Principal Act the following section is inserted:

Determinations in relation to the Republic of South Africa

“10. (1) The Minister may, by determination in writing published in the *Gazette*, declare the Republic of South Africa to have been, with effect from 19 August 1985, a proscribed country and, upon the publication of the determination in the *Gazette*, that country shall be taken to have been and to be, for the purposes of this section, a proscribed country during the period commencing on that day and ending on the day on which that determination is revoked.

“(2) Where the Minister has made a determination under sub-section (1), the Minister may, at any time while that determination is in force, by another determination in writing published in the *Gazette*, declare that expenditure of a specified kind incurred during the period to which the determination under this sub-section relates, being expenditure that relates, directly or indirectly, to trade with the Republic of South Africa, is not, notwithstanding any other provision of this Act, eligible expenditure for the purposes of this Act, but the Minister shall not make such a determination in respect of expenditure the liability to pay which arose under an agreement or arrangement entered into before the commencement of that period.

“(3) Where the Minister has made a determination under sub-section (1), the Minister may, at any time while that determination is in force, by another determination in writing published in the *Gazette*, declare that consideration of a specified kind received during the period to which the determination under this sub-section relates, being consideration that relates, directly or indirectly, to trade with the Republic of South Africa, is not, notwithstanding any other provision of this Act, export earnings for the purposes of this Act, but the Minister shall not make such a determination in respect of consideration received under an agreement or arrangement entered into before the commencement of that period.

“(4) Where the Minister has made a determination under sub-section (1), the Minister may, at any time while that determination is in force, by another determination in writing published in the *Gazette*, provide that expenditure of a specified kind incurred during the period to which the determination under this sub-section relates by persons included in a specified class or classes of persons is not, notwithstanding any other provision of this Act, eligible expenditure for the purposes of this Act, but the Minister shall not make such a determination in respect of expenditure the liability to pay which arose under an agreement or arrangement entered into before the commencement of that period.

“(5) Where the Minister has made a determination under sub-section (1), the Minister may, at any time while that determination is in force, by another determination in writing published in the *Gazette*, declare that consideration of a specified kind received during the period to which the determination under this sub-section relates by persons included in a specified class or classes of persons is not, notwithstanding any other provision of this Act, export earnings for the purposes of this Act, but the Minister shall not make such a declaration in respect of consideration received under an agreement or arrangement entered into before the commencement of that period.

“(6) The classes of persons that may be specified in a determination under sub-section (4) or (5) are—

- (a) nationals or citizens of the Republic of South Africa;
- (b) companies having a share capital the majority of the shares in which are beneficially owned by nationals or citizens of that country;
- (c) partnerships a majority of the members of which are nationals or citizens of that country; or
- (d) persons, companies or partnerships having some other substantial connection with that country.

“(7) The classes of persons that may be specified by virtue of paragraph (6) (d) are not limited, in any way, by paragraphs (6) (a), (b) and (c).

“(8) The making of a determination under sub-section (2), (3), (4) or (5) shall not be taken to prevent the making of a further determination, or further determinations, under that sub-section while that first-mentioned determination is in force.

“(9) A reference in sub-section (2), (3), (4) or (5) to the period to which the determination under that sub-section relates is a reference to the period commencing on a day that is specified in the determination, being—

- (a) in the case of a determination under sub-section (2) or (3)—a day not earlier than the day on which the determination is made; and
- (b) in the case of a determination under sub-section (4) or (5)—a day not earlier than 19 August 1985,

and ending on the day on which the determination is revoked or the day on which the determination under sub-section (1) is revoked, whichever first occurs.”.

Residents of Australia

10. Section 11 of the Principal Act is amended by omitting all words after paragraph (c) and substituting the following:

“(d) a partnership that is regulated in accordance with the law of a State or Territory and that carries on business in Australia, and a reference to a person resident outside Australia shall be construed as a reference to any person other than a resident of Australia”.

Claims for grants

11. Section 13 of the Principal Act is amended by omitting sub-section (2A) and substituting the following sub-sections:

“(2A) A claim relating to a grant year shall be submitted—

- (a) in the case of a claim relating to a grant year other than the grant year referred to in paragraph (b)—within 5 months after the end of that grant year; and
- (b) in the case of a claim relating to the grant year commencing on 1 July 1984—on or before 30 November 1985.

“(2B) Notwithstanding sub-section (2A), the Board may, in any case where a person’s entitlement to a grant in respect of a grant year is affected by the application of section 19 to that person, after the end of that grant year, in its discretion, permit that person to submit a claim relating to that grant year after the end of the period specified in that sub-section.”.

Persons not eligible for grants

12. Section 14 of the Principal Act is amended by omitting sub-sections (3) to (9) (inclusive) and substituting the following sub-sections:

“(3) In determining the grant entitlement, for the purposes of this Act, of an authority or association that is declared by the regulations to be, except in respect of a particular business activity carried on by that authority or association, a body to which grants are not payable, any eligible expenditure incurred, or export earnings received, by that authority or association in respect of any other business activity carried on by that authority or association shall be disregarded.

“(4) A grant is not payable to a person in respect of a particular grant year if—

- (a) the export earnings of that person in that grant year exceed \$20,000,000; or
- (b) the amount of eligible expenditure incurred by that person in that grant year does not exceed \$5,000.”

Repeal of section 15

- 13.** Section 15 of the Principal Act is repealed.

Grant entitlements

- 14.** Section 16 of the Principal Act is amended—

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

“(a) 70% of the amount by which the eligible expenditure incurred by the claimant during that grant year exceeds \$5,000; and

- (b) an amount equal to—

- (i) in the case of a claimant to whom sub-section (2) does not apply—\$200,000; or

- (ii) in any other case—the maximum grant entitlement in respect of that grant year and that claimant as determined in accordance with sub-section (2).”; and

- (b) by adding at the end the following sub-sections:

“(2) Where a claimant, not being an approved body—

- (a) has received, or is entitled to receive, grants in respect of not less than 2 grant years; and

- (b) lodges a claim in respect of a particular subsequent grant year, being the grant year ending on 30 June 1986 or a later grant year,

the maximum grant entitlement in respect of that particular grant year and that claimant is an amount equal to the lesser of \$200,000 and—

- (c) where grants have been received, or are receivable, by that claimant in respect only of 2 grant years preceding that particular grant year—50% of the amount of export earnings of the claimant in respect of that particular grant year;

- (d) where grants have been received, or are receivable, by the claimant in respect only of 3 grant years preceding that particular grant year—25% of the amount of export earnings of the claimant in respect of that particular grant year;

- (e) where grants have been received, or are receivable, by the claimant in respect only of 4 grant years preceding that particular grant year—12.5% of the amount of export earnings of the claimant in respect of that particular grant year;

- (f) where grants have been received, or are receivable, by the claimant in respect only of 5 grant years preceding that particular grant year—10% of the amount of export earnings of the claimant in respect of that particular grant year; and

- (g) where grants have been received, or are receivable, by the claimant in respect of 6, or more than 6, grant years preceding that particular grant year—7.5% of the amount of export earnings of the claimant in respect of that particular grant year.

“(3) For the purposes of sub-section (2), a reference to an amount shall be construed as including a reference to a nil amount.”.

15. Section 19 of the Principal Act is repealed and the following section is substituted:

Change in ownership of business, &c.

“19. Where the Board is satisfied that—

- (a) at any time, including a time before 1 July 1974, a particular business activity is or was carried on by a person or persons; and
- (b) at a later time, by reason of the formation or termination of the partnership or corporation that carries on or carried on that activity, a change in the membership of a partnership that carries on or carried on that activity, the acquisition of shares in the capital of a corporation that carries on or carried on that activity or any other business arrangement, that particular business activity, or a business activity that, in the opinion of the Board, is substantially similar to that business activity, is or was carried on by a different person or persons,

the Board may treat the last-mentioned person or persons, and not the first-mentioned person or persons, as having carried on the first-mentioned business activity at the earlier time.”.

Secrecy

16. Section 37 of the Principal Act is amended by omitting from sub-section (2) “\$500 or imprisonment for 6 months” and substituting “\$2,000 or imprisonment for 1 year, or both”.

17. Section 38 of the Principal Act is repealed and the following section is substituted:

Adjustment of amounts

“38. (1) Where the Board is of the opinion that—

- (a) an effect of an act done on or after 20 May 1985 is to distribute or transfer expenditure or income among some or all of the persons (in this sub-section referred to as the ‘participants’) affected by the doing of the act; and
- (b) as a result, the Commonwealth would, but for this section, be liable to pay to such of the participants as are claimants, in respect of the grant year commencing on 20 May 1985 or a subsequent grant year, a total amount by way of grant that exceeds the total amount (if any) by way of grant that would have been payable to the participants if—

- (i) the act had not been done; and
- (ii) such of the participants (if any) who ceased to exist had not ceased to exist,

the Board may, for the purposes of this Act and to the extent it thinks necessary to prevent or limit that result, treat the whole or any part of any expenditure or income that has been so distributed or transferred as if it were re-allocated among some or all of the participants in such manner as the Board determines.

“(2) Where the Board is of the opinion that—

- (a) an effect of an act done on or after 20 May 1985 is to transfer or re-arrange a business activity or business activities between persons (in this sub-section referred to as the ‘participants’) affected by the doing of the act; and
- (b) as a result, the Commonwealth would, but for this section, be liable to pay to such of the participants as are claimants, in respect of that business activity or those business activities and of the grant year commencing on 20 May 1985 or a subsequent grant year, a total amount by way of grant that exceeds the total amount (if any) by way of grant that would have been payable to the participants in respect of that business activity or those business activities and that grant year if—
 - (i) the act had not been done; and
 - (ii) such of the participants (if any) who ceased to exist had not ceased to exist,

the Board may, for the purposes of this Act and to the extent it thinks necessary to prevent or limit that result, treat the whole or any part of any expenditure incurred, or of any income received, in respect of that business activity or those business activities as if it were re-allocated among some or all of the participants in such manner as the Board determines.

“(3) In the exercise of its power, under sub-section (1) or (2), to treat expenditure or income as if that expenditure or income were re-allocated between persons, the Board may, for the purpose only of this section, treat any of those persons who has ceased to exist as if that person had not ceased to exist.

“(4) Where persons (in this sub-section referred to as the ‘affected participants’) are affected by a re-allocation under sub-section (1) or (2), each of the affected participants who is a claimant in respect of that grant year is entitled, notwithstanding any other provision of this Act and, if a grant has already been determined or paid in respect of that affected participant in respect of that grant year, in lieu of the grant so determined or paid, to a grant of the amount (if any) ascertained in accordance with the formula $\frac{AB}{C}$, where—

- A is the amount of the grant that would have been payable to the affected participant in respect of the grant year but for the re-allocation;

B is the total amount of the notional grant entitlements, as determined in accordance with this section, in respect of all the affected participants in respect of the grant year; and

C is the total amount of the grants that would, but for the re-allocation, be payable in respect of the grant year to such of the affected participants as are claimants in respect of the grant year,

but a person is not entitled, by virtue of this sub-section, to a grant in respect of that grant year if the person would not, but for this section, be entitled to a grant in respect of that grant year.

“(5) The notional grant entitlement in respect of a grant year of a person who is affected by a re-allocation under sub-section (1) or (2) of income or expenditure in respect of a grant year and who has submitted, or who submits, a claim in respect of the grant year is the amount that, in the opinion of the Board, would be the grant entitlement of the person in respect of the grant year under this Act (other than this section) if the claim were assessed taking into account the re-allocation.

“(6) Where a person, other than a person who has ceased to exist, who is affected by a re-allocation under sub-section (1) or (2) of income or expenditure in respect of a grant year does not submit a claim to the Board in respect of that grant year within the time allowed by this Act—

(a) the Board shall, by notice in writing, request the person to provide to the Board, within a period specified in the notice, a statement setting out such information, of a kind specified by the Board, as will permit the Board to determine the amount that would, in the opinion of the Board, have been the grant entitlement of the person under this Act (other than this section) in respect of the grant year if—

(i) a claim containing that information had been duly submitted; and

(ii) the claim had been assessed taking into account the re-allocation; and

(b) the notional grant entitlement of the person in respect of the grant year is—

(i) if the person complies with the request—the amount determined by the Board as mentioned in paragraph (a); and

(ii) in any other case—nil.

“(7) The notional grant entitlement in respect of a grant year of a person who is affected by a re-allocation under sub-section (1) or (2) of income or expenditure in respect of a grant year and who has ceased to exist is the amount that, in the opinion of the Board, would have been the grant entitlement of that person in respect of that grant year under this Act (other than this section) if—

(a) the person had continued in existence;

(b) the person had duly submitted a claim; and

(c) the only expenditure and the only income referred to in the claim were the expenditure and income re-allocated to the person.

“(8) Where, by reason of the Board’s having calculated, pursuant to sub-section (4), the amount by way of grant that is payable to a person in respect of a grant year, a lesser amount is payable than has already been paid to that person in respect of that grant year, that person shall be indebted to the Commonwealth in an amount equal to the amount by which the grant already paid exceeds that lesser amount and the amount of that indebtedness—

- (a) may be deducted from money payable to that person under this Act; or
- (b) may be recovered from that person by the Commonwealth in a court of competent jurisdiction.

“(9) Where a person is affected by a re-allocation under sub-section (1) or (2) of income or expenditure in respect of a grant year and has submitted a claim in respect of the grant year, the Board shall defer calculating the grant entitlement until each other person affected by the re-allocation (not including any person who has ceased to exist)—

- (a) has submitted a claim to the Board so as to permit the Board to calculate the notional grant entitlement in respect of that other person and that grant year;
- (b) has provided to the Board a statement in accordance with sub-section (6); or
- (c) has been requested by the Board to provide a statement in accordance with sub-section (6) and has failed to do so.

“(10) For the purposes of this section, a person shall be taken to be affected by a re-allocation under sub-section (1) or (2) if the Board, under either of those sub-sections—

- (a) treats income or expenditure of the person as if it were re-allocated to another person or other persons; or
- (b) treats income or expenditure of another person or other persons as if it were re-allocated to the first-mentioned person.

“(11) In this section, unless the contrary intention appears—

- (a) a reference to an amount includes a reference to a nil amount;
- (b) a reference to the doing of an act is a reference to the doing of an act or thing or to the doing of acts or things;
- (c) without limiting the generality of paragraph (b), a reference to the doing of an act includes a reference to—
 - (i) an entry into an agreement or arrangement;
 - (ii) the formation or termination of a company or partnership; or
 - (iii) the distribution of expenditure, income or business activities between different persons or different companies; and
- (d) a reference to a person affected by the doing of an act includes a reference to a person so affected who subsequently ceased to exist.”.

Offences

18. Section 39 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) A person shall not knowingly obtain or attempt to obtain an amount by way of grant that is not payable.

Penalty—

- (a) in the case of a corporation—\$50,000; or
- (b) in any other case—\$10,000 or imprisonment for 5 years, or both.

“(1A) A person shall not—

- (a) obtain or attempt to obtain an amount by way of grant by means of a statement that the person knows to be false or misleading in a material particular or by means of a book, record or document which to the person’s knowledge contains information that is false or misleading in a material particular; or
- (b) make to the Board, or to a person having duties or functions under this Act, a statement that is false or misleading in a material particular.

Penalty—

- (a) in the case of a corporation—\$5,000; or
 - (b) in any other case—\$1,000 or imprisonment for 6 months, or both.”; and
- (b) by omitting sub-sections (3), (4) and (5) and substituting the following sub-sections:

“(3) An offence against sub-section (1) is an indictable offence.

“(4) Notwithstanding that an offence against sub-section (1) is expressed to be an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

“(5) Where, in accordance with sub-section (4), a court of summary jurisdiction convicts a person of an offence against sub-section (1), the penalty that the court may impose is—

- (a) in the case of a corporation—\$10,000; or
- (b) in any other case—\$2,000 or imprisonment for 1 year, or both.”.

19. After section 39 of the Principal Act the following section is inserted:

Convicted persons to repay grants, &c.

“39A. (1) Where a person is convicted of an offence against sub-section 39 (1)—

- (a) if the offence relates to a claim for a grant in respect of a particular grant year and the grant in respect of that grant year has been paid—the amount of the grant in respect of that grant year is repayable by that person to the Commonwealth;

- (b) if the offence relates to a claim for a grant in respect of a particular grant year and the grant in respect of that grant year has not been paid—a grant is not payable to that person in respect of that grant year; and
- (c) if the offence relates to a claim for a grant in respect of a grant year and that grant has been paid in part—
 - (i) the amount of the grant in respect of that grant year that has been so paid is repayable by that person to the Commonwealth; and
 - (ii) no further money by way of grant is payable to that person in respect of that grant year.

“(2) Where an amount is repayable by a person to the Commonwealth by virtue of the operation of sub-section (1), that amount is a debt due by that person to the Commonwealth and may be—

- (a) deducted from money (if any) payable to that person under this Act; or
- (b) recovered from that person by the Commonwealth in a court of competent jurisdiction.”.

Repeal of section 40AAA

20. Section 40AAA of the Principal Act is repealed.

Declaration of approved bodies

21. Section 40B of the Principal Act is amended by omitting sub-section (2).

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

Collection of statistics relating to operation of Act

“40C. (1) The Board may, by writing, request a person who is a claimant in relation to the grant year ending on 30 June 1986 or in relation to a subsequent grant year to give to the Board, with that person’s claim, in a form approved by the Board, a statement containing such statistical information relating to matters relevant to the periodic evaluation of the effectiveness of this Act as is prescribed.

“(2) Any person who, without reasonable excuse, refuses or fails to comply with a request under sub-section (1) is guilty of an offence.

Penalty:

- (a) in the case of a corporation—\$5,000; or
- (b) in any other case—\$1,000 or imprisonment for 6 months, or both.”.

Regulations

23. Section 43 of the Principal Act is amended—

- (a) by omitting sub-section (3) and substituting the following sub-section:

- “(3) The regulations may declare that services of a specified kind, being services of an educational nature supplied to students in Australia, are eligible internal educational services.”; and
- (b) by omitting sub-section (5) and substituting the following sub-sections:
- “(5) The regulations may declare that a specified authority or association is a body to which grants are not payable except in respect of a particular business activity carried on by that authority or association that is of a kind specified in the regulations.
- “(6) Regulations referred to in sub-sections (2), (3), (4) or (5) that are made after the day on which the *Export Market Development Grants Amendment Act 1985* receives the Royal Assent and before 1 January 1986 may be expressed to have taken effect from 20 May 1985.”.

Export earnings earned between 20 May 1985 and 30 June 1985

24. (1) Where—

- (a) a claimant submits a claim in respect of the period of 12 months commencing on 1 July 1984;
- (b) the Board is of the opinion that the export earnings of the claimant, as assessed by the Board, for that period would be sufficient to meet the requirements of either paragraph 14 (3) (a), or paragraph 14 (3) (b), of the Principal Act or of both of those paragraphs; and
- (c) the Board is of the opinion that the export earnings of the claimant, as assessed by the Board, for the period from 1 July 1984 to 19 May 1985 would not be sufficient to meet the requirements of either paragraph 14 (3) (a) or 14 (3) (b) of the Principal Act,

the Board may, by notice in writing given to the claimant, invite the claimant to submit to the Board, within such period as the Board specifies in the notice, a written request that the Board treat particular export earnings of the claimant, as assessed by the Board, for the period from 20 May 1985 to 30 June 1985, being export earnings that are specified by the claimant in the request, as export earnings of the claimant for the period from 1 July 1984 to 19 May 1985.

(2) Where a claimant to whom a notice has been given under sub-section (1) submits a request to the Board, in accordance with that notice, that particular export earnings of the claimant, as assessed by the Board, for the period from 20 May 1985 to 30 June 1985 be treated as export earnings of the claimant for the period from 1 July 1984 to 19 May 1985, this Act shall have effect, for all purposes, as if those particular export earnings were export earnings of the claimant for the second-mentioned period and not for the first-mentioned period.

(3) Nothing in this section shall be taken to imply that a claimant cannot, in a request submitted in accordance with a notice given under sub-section (1), request that part only of the export earnings attributable to a particular transaction be treated by the Board in the manner specified in that sub-section.

(4) In this sub-section, “Board”, “claim”, “claimant” and “export earnings” have the same respective meanings as those expressions have for the purposes of the Principal Act.

Transitional

25. (1) Notwithstanding the amendments of the Principal Act effected by this Act, any expenditure that has been treated as having been incurred within the meaning of the Principal Act as in force at any time before 20 May 1985 shall not also be treated as having been incurred within the meaning of the Principal Act as in force on or after that date.

(2) The Board shall, in assessing a claim in relation to a period commencing on 1 July 1984 but ending after the end of the grant year commencing on that day—

- (a) treat that claim as if it were a claim for the grant year commencing on that day;
- (b) disregard any eligible expenditure that is to be taken, within the meaning of the Principal Act, to have been incurred by the claimant after the end of that grant year; and
- (c) disregard any export earnings of the claimant for the period after the end of that grant year other than export earnings that are to be taken, in accordance with section 24 of this Act, to be export earnings for the period from 1 July 1984 to 19 May 1985.

(3) In sub-section (2)—

“Board”, “claim”, “claimant” and “export earnings” have the same respective meanings as those expressions have for the purposes of the Principal Act;

“grant year” has the same meaning as that expression has for the purposes of the Principal Act as amended by this Act.

PART III—AMENDMENTS OF THE EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT ACT 1982

Principal Act

26. The *Export Market Development Grants Amendment Act 1982*² is in this Part referred to as the Principal Act.

Commencement

27. Section 2 of the Principal Act is amended by omitting from sub-section (2) “and 4 (2) and sections 5,” and substituting “, 4 (2) and 5 (1) and sections”.

Export Market Development Grants Amendment No. 110, 1985

NOTES

1. No. 154, 1974, as amended. For previous amendments, see Nos. 36 and 192, 1978; Nos. 74 and 119, 1981; and No. 157, 1982.
2. No. 157, 1982.

[*Minister's second reading speech made in—
House of Representatives on 21 August 1985
Senate on 18 September 1985*]