

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Export Market Development Grants Amendment Bill 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Trade)

The Hon J S Dawkins

EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 1985

GENERAL OUTLINE

This Bill gives legislative effect to the Government's decision announced to Parliament in the 14 May 1985 Statement by the Treasurer to amend the Export Market Development Grants Act 1974 with effect from 20 May 1985. The report of the National Export Marketing Strategy Panel (Ferris Report) and an evaluation by the Department of Trade concluded that the EMDG scheme was badly designed and there was a need for significant reforms of the scheme to overcome abuse and manipulation as well as provide a positive inducement to genuine exporters in a cost-effective and measurable way. The objectives of the amendments to the Act are to target the EMDG scheme more towards the committed smaller to medium exporter, introduce some enhancements and technical changes, overcome abuse and manipulation, to make the scheme more cost-effective, and thereby lessen its burden on Government expenditure.

Under the amendments, claimants with export earnings in excess of \$20 million in the grant year will be excluded from the scheme. The tourist industry will also be excluded but the Government has introduced in its place a new Tourism Overseas Promotion Scheme to meet the tourism industry's particular promotional needs. The promotional visit allowance of \$50 per day will be discontinued. The maximum grant entitlement will remain at \$200,000 for the first two grant years but thereafter will be the lesser of \$200,000 or an applicable percentage of export earnings. Grants will be paid only on the amount of assessed eligible expenditure in excess of \$5000 incurred in a grant year.

Powers to adjust amounts of grant entitlements will be strengthened with provision for increasing penalties under the scheme in line with current Commonwealth law policy. Benefits are to be extended to include the promotion of educational, hospital and medical

services. Insurance premiums paid in protecting Australian patents, registered designs or trademarks overseas and copyrights open to infringement outside Australia will also be eligible expenditure. Certain technical changes necessary to facilitate the administration of the legislation have also been incorporated in the Bill. The Bill will provide for the EMDG scheme, as amended, to continue until 30 June 1990.

Provision is also made for the Government to act quickly to deny the granting of export incentives in cases where it is decided to take economic measures against a particular country, in the context of, for example, international action arising from a United Nations Security Council resolution.

It is envisaged that the amended EMDG scheme, while providing a worthwhile level of assistance to committed smaller to medium sized firms in a cost-effective and measurable way, will result in significant cost savings. The Government estimates that, in its first full year of operation, the revised scheme will result in cost savings of approximately \$80 million when compared with the old scheme. This is notwithstanding the additions to the scheme which it is estimated will cost \$1.6 million per year.

EXPLANATORY NOTES - EXPORT MARKET DEVELOPMENT
GRANTS AMENDMENT BILL 1985

- Clause 1: Cites the short title of the Bill.
- Clause 2: Provides for the Bill to come into operation on receipt of Royal Assent.
- : Clauses 4 to 8 (inclusive), 10, 12 to 15 (inclusive), 17, 19 and 21 shall take effect from 20 May 1985.
 - : Clause 27 shall take effect from 1 July 1982.
- Clause 3: Identifies the Export Market Development Grants Act 1974 as the Principal Act.
- Clause 4: Amends the title to the Principal Act to reflect the exclusion of the tourist industry from the EMDG scheme.
- Clause 5: Deletes, amends or introduces a number of definitions to the Principal Act
- (a) deletes from sub-section 3(1) the definition of 'approved tourist body' as a consequence of excluding tourist services.
 - (b) defines 'eligible internal educational services' which are to be included in the EMDG scheme.
 - (c) deletes from sub-section 3(1) the definition of 'eligible tourist services'.
 - (d) provides for the 1984/85 grant year to end on 19 May 1985; the 1985/86 grant year to commence on 20 May 1985 and end on 30 June 1986; and for the EMDG scheme to continue until 30 June 1990.
 - (e) deletes from sub-section 3(1) the definition of 'tourist body'.
 - (f) amendment as a consequence of including eligible internal educational services in the scheme.
 - (g) . expands section 3 by adding sub-section 3(5) to clarify 'principal' status in relation to the sale of eligible goods for the purpose of determining the value of export earnings.

- . sub-sections 3(6) to 3(8) define the meaning of the term 'incurred' as it relates to eligible expenditure. Expenditure shall be taken to have been incurred only at a time when the amount of the expenditure is acquitted. Expenditure that is acquitted during a grant year for goods or services which were not provided before the end of that grant year, will only be treated as being acquitted when the goods or services are actually provided
- . sub-section 3(9) provides that eligible expenditure may be acquitted by contra (offsetting) entries in books of account
- . sub-section 3(10) provides for clarification of 'person' as defined under sub-section 3(1) by expanding the reference to 'partnership' within that definition to clarify the status of parties to a consortium or joint venture.

Clause 6: Relocates, with minor consequential amendments, existing sub-sections 14(4) to 14(8) (inclusive) of the Principal Act to that area of the Act dealing with interpretations and definitions.

- : Introduces the eligibility of export earnings derived from the supply of eligible internal educational services.

- Clause 7:
- (a) Deletes the eligibility of expenditure incurred in relation to tourist services and introduces the eligibility of internal educational services
 - (b) includes as expenditure in terms of the Act expenses attributable to the preparation or submission of tenders or quotations for the supply of eligible internal educational services
 - (c) deletes expenses in relation to tourist services from the definitions of expenditure
 - (d) omits the word 'or' in paragraph 4(2)(d) of the Principal Act made superfluous by the addition of paragraph 4(2)(ea)

- (e) introduces the eligibility of insurance premiums paid in protecting Australian patents, registered designs or trade marks overseas and copyright open to infringement outside Australia
- (f) amendment designed to clarify that insurance premiums paid in protecting Australian industrial property rights are not to be excluded on the grounds it is expenditure of a capital nature
- (g) amendment required as a consequence of deleting tourist services
- (h) removes the restriction on eligibility of travel expenditure incurred by overseas agents representing more than one principal
- (j) and (k) are amendments required as a consequence of deleting tourist services
- (m) sub-section (2AA) introduced to restrict claims for air travel to 65% of the first class air fare where first class travel costs are claimed.

Sub-section (2AB) introduced to rectify an anomaly in the legislation and requires that claims for independent agents are to be specified on a fee plus expenses basis to isolate ineligible costs of accommodation, sustenance and entertainment

- (n) technical amendment to clarify the requirement that all members of a consortium are to be residents of Australia
- (o) and (p) are amendments required as a consequence of deleting tourist services
- (q) technical amendment which clarifies eligibility of expenditure for payments made to associations engaged in export promotional activities on behalf of members
- (r) sub-section 4(5) is amended to provide the Board with discretionary power to require claimants to justify the reasonableness of claimed expenditure.

Sub-section 4(5A) is introduced to place the onus on the claimant to justify incurred expenditure and thus enable the Board to determine whether the amount claimed is reasonable.

Sub-section 4(5B) is introduced to limit the scope for seeking increased grants by requiring costs that are claimed under the provisions of paragraphs 4(2)(b), 4(2)(c), 4(2)(d), 4(2)(e) or 4(2)(ea) of the Principal Act to be calculated on the basis of actual salary rates of employees and not professional charge out rates.

- (s) amendment required as a consequence of deleting tourist services and substituting eligible internal educational services.
- (t) technical amendment to clarify the meaning of 'year'
- (u) and (v) amendment required as a consequence of deleting tourist services.

Clause 8: Section 6 of the Principal Act is repealed as a consequence of deleting tourist services.

Clause 9: Inserts section 10 which provides that a country may, at any time, be proscribed by Ministerial determination published in the Gazette so that expenditure in respect of that country will not be admitted from the time the determination is made, except in cases where a commitment to incur the expenditure was entered into prior to the determination being made. Earnings from exports to a proscribed country may not be admitted for the purposes of the export earnings test except where those earnings are a result of an agreement or arrangement entered into before that country became a proscribed country.

Furthermore, companies incorporated in Australia with proscribed foreign ownership, proscribed nationals domiciled in Australia and partnerships consisting of proscribed nationals may be excluded from any assistance provided by the Act, unless the expenditure or export earnings arose under an agreement or arrangement entered into before that country became a proscribed country.

The Ministerial determination may incorporate all or any of the exclusions mentioned in this section.

Clause 10: Section 11 of the Principal Act is amended to clarify the meaning of resident of Australia in regard to partnerships.

Clause 11: Section 13 of the Principal Act is amended to remove the discretion of the Export Development Grants Board to extend the date for lodgement of claims and to provide for a final close off date except where a person's entitlement to a grant is affected by the application of section 19 (see Clause 15).

Recent AAT decisions have had the effect of making it extremely difficult for the Board to refuse to accept late lodged claims for any preceding grant year no matter what the reason given for late lodgement. This has aggravated the problem of containing expenditure within the funds appropriated by Parliament for the EMDG scheme and also creates administrative problems for the Board.

Clause 12: Sub-section 14(4) to 14(8) are omitted having been relocated, with minor consequential amendments, by Clause 6 to that area of the Principal Act dealing with interpretations and definitions.

Sub-section 14(9) is omitted as a consequence of deleting tourist services and the promotional visit allowance.

A new sub-section 14(3) is inserted to provide that statutory authorities which are admitted into the scheme for a particular business activity (e.g. to supply educational services) are eligible only in regard to that particular business activity.

Existing sub-section 14(3) is omitted from the Principal Act and replaced with new provisions for grants not to be payable to persons with export earnings in excess of \$20 million in the grant year or to persons with eligible expenditure of \$5000 or less (sub-section 14(4)).

Clause 13: Section 15 of the Principal Act is repealed as a consequence of deleting promotional visit allowances from the EMDG scheme

Clause 14: Section 16 of the Principal Act is amended and repealed with new entitlement provisions whereby:

- (a) a grant will only be payable on the amount of assessed eligible expenditure in excess of \$5000 in a particular grant year
- (b) approved bodies will be exempt from the maximum grant entitlement test and new exporters will have a two year exemption from the export earnings requirement
- (c) the maximum grant entitlement is to remain at \$200,000. However after receiving two grants, a claimant's maximum grant entitlement will be the lesser of \$200,000 or a percentage of export earnings achieved (50% in grant year 3, reducing to 7.5% in grant year 7 and thereafter).

Clause 15: Section 19 of the Principal Act is repealed and a new section substituted which clarifies the meaning of the section by allowing, as was originally intended, the tracing of a separate business activity as it is transferred from one party to another and to allow the Board to treat the successor as having previously carried on that business.

Clause 16: Section 37 of the Principal Act is amended by increasing the penalties for an offence against the secrecy provisions of the Act to a level which is more consistent with Commonwealth law policy in regard to this type of offence.

Clause 17: Section 38 of the Principal Act was intended to provide the Board with power to adjust the amounts of grant entitlement where it is of the opinion that action by a claimant would achieve a higher grant payment than would otherwise be available in a way which is contrary to the intended operation of the EMDG scheme. A 1984 Administrative Appeals Tribunal decision highlighted problems with the interpretation of the section as it was drafted casting doubts over the ability of the Board to use the provisions of the section as was originally intended.

Clause 16 repeals Section 38 of the Principal Act and substitutes a new section which will allow the Board to adjust grant entitlement where :

- (a) a business activity is split or a separate entity formed to either increase grant entitlement or obtain an additional grant
- (b) a transfer of expenditure occurs between parties to effect a greater combined grant than otherwise would be payable
- (c) a transfer of export activities occurs for the purpose of either
 - (i) increasing export earnings to circumvent the export performance test
 - (ii) reducing export earnings to circumvent the maximum export earnings limit.

Section 38 is the main section in the Act designed to empower the Board to overcome abuse of the EMDG scheme.

Clause 18: Section 39 of the Principal Act is amended to increase penalties for offences against the Act to bring them into line with current Commonwealth law policy for similar offences.

Clause 19: Section 39A is inserted in the Principal Act to provide, where an offence against the Act is proven, for

- (a) repayment of the grant to the Commonwealth in cases where payment has been made
- (b) disqualification of entitlement for a grant where payment has not been made.

Clause 20: Section 40AAA is repealed as a consequence of excluding tourist services.

Clause 21: Section 40B of the Principal Act is amended by omitting sub-section (2) as a consequence of deleting tourist services.

Clause 22: After section 40B of the Principal Act a new section is introduced to empower the Board to collect information of a statistical nature for purposes of evaluating the

effectiveness of the EMDG scheme as recommended in the report of the National Export Marketing Strategy Panel (Ferris Report). Penalties are to be introduced where persons fail to provide statements requested.

- Clause 23: Section 43 of the Principal Act is amended by omitting sub-section (3) as a consequence of deleting tourist services and inserts a new sub-section which provides that the regulations may declare specified educational services supplied to students in Australia to be eligible internal educational services. By definition in amended sub-section 4(1), the students must be persons resident outside Australia (refer Clause 7 of this Bill).
- : Sub-section (5) is replaced to provide
- (a) the regulations may specify the authorities or associations referred to in Clause 12 (sub-section 14(3))
 - (b) the regulations referred to in sub-sections 43(2), (3), (4) or (5) are to take effect from 20 May 1985.
- Clause 24: Introduced so as to assist claimants who fail to meet the export performance requirement of sub-section 14(3) of the Principal Act in regard to the 1984/85 grant year (1 July 1984 to 19 May 1985) by giving them the option to claim export earnings acquired between 20 May 1985 and 30 June 1985 as export earnings for the 1984/85 grant year or the 1985/86 grant year.
- Clause 25: Introduced as a transitional arrangement, to enable the Board to treat expenditure incurred prior to 20 May 1985 as expenditure incurred on or before 19 May 1985 and not eligible after that date, thus avoiding double claims for the same expenditure.

This clause also empowers the Board to disregard, in relation to the 1984/85 grant year, expenditure incurred and export earnings after 19 May 1985 with the proviso that claimants may exercise an option regarding export earnings in terms of Clause 24.

Clause 26: For the purpose of Clause 27, the Export Market Development Grants Amendment Act 1982 is the Principal Act.

Clause 27: Corrects a drafting error in sub-section 2(2) of the Export Market Development Grants Amendment Act 1982. Sub-section 5(2) of that Act was to come into operation on 1 July 1983 (see sub-section 2(4) and not 1 July 1982 as implied by sub-section 2(2)).