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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXPORT MARKET DEVELOPMENT GRANTS
AMENDMENT BILL (NO.2) 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry,
Technology and Commerce, Senator the Hon. John N Button)



EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL (No.2) 1990

OUTLINE

The purpose of this Bill is to amend the Export Market Development Grants Act 1974 (EMDG Act) to implement the Government's decision on the recommendations of the Report of the Hughes Committee for Review of Export Market Development Assistance. The Government's proposed amendments to that Act were jointly announced by the Prime Minister and the Minister for Industry, Technology and Commerce, Senator Button, on 28 February 1990.

The amendments announced by the Prime Minister and Senator Button are, by this Bill, made retrospective to 1 July 1990 in accordance with that announcement.

The major amendments to the EMDG Act proposed by this Bill are that:

- (a) the Scheme be extended by five years to 30 June 1995;
- (b) the minimum expenditure threshold before becoming eligible for a grant be raised from \$10,000 to \$30,000, with expenditure after the first \$15,000 being eligible for grants under the scheme;
- (c) the grant rate be reduced from 70% to 50%;
- (d) the maximum grant in any year be increased from \$200,000 to \$250,000 and the export earnings ceiling beyond which grants are no longer payable be increased from \$20 million to \$25 million;
- (e) firms be allowed to claim \$200 per day, for a maximum of 21 days on any given occasion, as eligible expenditure for overseas visits in lieu of expenditure on hotels, meals and accommodation;
- (f) the number of grants that a claimant can receive be limited to eight;
- (g) there be introduced a new category of claimant - Approved Trading House - to encourage smaller firms to collaborate with these experienced exporters. To facilitate this goal, Approved Trading Houses will not be subject to the normal \$25 million export earnings limitation and the maximum grant payable to an Approved Trading House will be set by regulations to the Act;
- (h) there be introduced a further new category of claimant - approved joint ventures and consortia - which are to be able to access the scheme in their own right without inheriting the individual members' claims history for either the eight year cut off or the export earnings performance test which comes into play after a claimant has received two grants;

2.

- (i) the cost of attending educational courses in international business development be claimable expenditure; and
- (j) the regulation making power be extended to empower the making of regulations to include in the Scheme an extended range of services as regards overseas clients, including health services; film making, recording and similar services; legal services and certain tourism services.

FINANCIAL IMPACT STATEMENT

It is estimated that the amendments to the EMDGS will save \$31 million in the 1991/92 financial year and \$44 million in the 1992/93 financial year. The savings take into account the cost of the new discretionary scheme - the International Trade Enhancement Scheme - of \$21.3 million in each of the 1991/92 and 1992/93 financial years.

No savings will occur in the 1990/91 financial year as grants in that year will relate to expenditure incurred by claimants in the 1989/90 financial year.

The current estimates for the amended Scheme are \$134 million in the 1991/92 financial year and \$148 million in the 1992/93 financial year.

As the amended Scheme remains uncapped however, its cost will depend, to a significant extent, on the prevailing economic conditions and how well industry responds to the new initiatives such as approved trading houses and approved joint ventures and consortia.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

- Commission : Australian Trade Commission established under the Australian Trade Commission Act 1985
- Act : Export Market Development Grants Act 1974
- Scheme : Export Market Development Grants Scheme operating under the EMDG Act
- grant : Grant under the EMDG Act.

NOTES ON CLAUSES

Clause 1 Short title etc.

1. This clause provides:
 - . for the Act to be cited as the Export Market Development Grants Amendment Act (No.2) 1990; and
 - . that in the Act a reference to the "Principal Act" is a reference to the Export Market Development Grants Act 1974.

Clause 2 Commencement

2. This clause provides that the Act shall be taken to have commenced on 1 July 1990.

Clause 3 Interpretation

3. This clause amends subsection 3(1) by providing definitions for several new terms to enable, amongst other matters, the coverage of trading houses and joint ventures and consortia by the Scheme. Additionally, to accommodate these matters, the layout of the Act has been substantially altered and definitions which are currently in subsection 4(8) (other than the definition of 'prescribed services in the construction industry') are transferred to this clause.

4. The major amendments are:
 - . paragraphs 3(a) and (b) which expand the definition of 'know how' by removing the limitation that it be restricted to 'scientific or technical' knowledge and information in relation to 'industrial' operations;

4.

- . paragraph 3(c) which extends the operation of the Act to 30 June 1995 by replacing paragraph (e) of the definition of 'grant year', which provides that a grant year includes the period 1 July 1990 to 30 December 1990, with a new paragraph which provides that a 'grant year' includes the year commencing on 1 July 1990 and any of the next 4 years;
- . paragraph 3(d) which provides that 'eligible expenditure' has the meaning provided by new section 11A rather than existing section 4 which is to be repealed;
- . paragraph 3(e) removes the current definition of 'eligible internal services' and provides for such services to be specified by regulations under new subsection 43(2B) - this will enable an expanded range of internal services to overseas clients to be brought within the Scheme;
- . paragraph 3(f) inserts several new definitions:
 - . relating to the extended coverage of the Scheme to an 'approved consortium', 'approved joint venture' and 'approved trading house' - these are defined by reference to the approval provisions of new subsection 40BD(1) as regards a consortium or joint venture and new subsection 40BA(1) as regards a trading house;
 - . providing that 'eligible tourism services' are services so specified by regulations under new section 43(3B);
 - . providing that 'grant ceiling' means in relation to a person other than an approved trading house \$250,000 and in respect of an approved trading house the amount prescribed by regulations; and
 - . providing that 'new business' as regards an approved trading house means business according to guidelines to be determined by the Commission under new section 41.
- . paragraph 3(h) inserts a new subsection 3(10) providing that for the purposes of determining when expenditure has been incurred for the purposes of the Act, payment by cheque or payment order is to be taken to have occurred when the relevant bank or financial institution debits the drawer's account with the amount of the cheque or payment order.

Clause 4 Export Earnings

5. This clause amends section 3A by taking an approved joint venture or approved consortium out of subsection 3A(1), relating to what constitutes a person's export earnings, and creating new subsections 3A(2B) to (2F) to govern the export earnings of such bodies.

6. New subsection 3A(2B) provides that the export earnings of an approved joint venture or approved consortium is the sum of the individual members' export earnings derived from the approved activity, project or purpose of the joint venture or consortium.

7. New subsection 3A(2C) provides that in working out the export earnings of a member subsection 3A(2) is to be disregarded. The effect of this is not to disbar from the Scheme approved joint ventures and approved consortia with non-Australian members and/or the work of which may be wholly or mostly carried out overseas - subsection 3A(2) would otherwise preclude this by excluding export earnings derived in such circumstances.

8. New subsection 3A(2D) and (2E) provide that where an approved joint venture or approved consortium has non-Australian members that the Commission may determine that person's percentage share of profits and losses, and where such a determination is made, the joint venture's or consortium's export earnings are reduced by that percentage. The effect of this is that the export earnings attributable to a non-Australian member will not count for grant purposes.

9. New subsection 3A(2F) prevents a member of an approved joint venture or consortium from taking advantage of that situation by lodging a claim for the same eligible expenditure both in that person's own right and on behalf of the joint venture or consortium.

10. New subsection 3A(2G) provides that a reference to an approved trading house's export earnings in a grant year means the trading house's earnings in respect of new business.

Clause 5 Repeal of section 4

11. This clause repeals existing section 4 relating to what constitutes eligible expenditure for grant purposes.

Clause 6 Insertion of new Part

12. This clause replaces existing section 4 with a new Part 1A - Eligible Expenditure. Part 1A is divided into 5 divisions and contains new sections 11A to 11ZE.

New
Division 1 General

New
Section 11A Operation of this Part

13. New subsections 11A(1),(2) and (3) set out the basic tests of what constitutes eligible expenditure for, respectively, a person, an approved trading house and an approved joint venture or approved consortium. Three elements are common to all claimants - expenditure is eligible expenditure:

- . only if it is incurred by the claimant;
- . only to the extent to which it is claimable expenditure (Division 2); and
- . only if it is qualifying export development expenditure for the claimant (Division 4).

In addition, as regards an approved trading house, such expenditure must be incurred in respect of new business; and as regards an approved joint venture or consortium it must be incurred in respect of the approved activity, project or purpose of the joint venture or consortium.

14. New subsection 11A(4) precludes payments and set-offs between members of an approved joint venture or consortium being eligible expenditure.

15. New subsections 11A(5),(6),(7) and (8) are declaratory as regards the purposes of Divisions 2, 3,4 and 5 of Part 1A.

16. New subsection 11A(9) provides that eligible expenditure includes expenditure deemed as such by new section 11B.

New
Section 11B Subscriptions to industry associations etc.

17. New section 11B reenacts current subsection 4(3).

New
Division 2 Claimable expenditure

New
Sections 11C 18. New sections 11C to 11F and 11H to 11K reenact, to 11F and with the amendments set out in paragraphs 19 and 20 below, existing paragraphs 4(2)(a) to (ea), picking up existing subsection 4(5B) in the appropriate provisions - new sections 11D, 11E, 11J and 11K.

19. New subsections 11C(2) and (3) insert new provisions which provide, where an agent acts for more than one claimant, for the apportionment between those claimants of the expenses of the agent, having regard to the different goods and services being promoted by the agent, the time spent by the agent on each of these matters and any other matters considered relevant by the Commission.

20. New sections 11C to 11F and 11H to 11K each have a new provision (11C(4), 11D(2), 11E(2), 11F(2), 11H(2), 11J(2) and 11K(2)) which provides that where payments by a claimant, broadly, to any body or person which is not at arm's length to the claimant, are not claimable expenditure, then each member of an approved joint venture or consortium is to be treated as if that member were a claimant for a grant and thereby have the same restriction applied to them. These provisions are to take account of the peculiar nature of joint ventures and consortia, which, apart from the EMDG Act, are not generally recognised as entities unless they enter into formal partnerships or incorporate.

New

Section 11G Expenses for certain educational courses

21. New section 11G provides that expenditure directly attributable to attendance by the claimant, or a director, partner or employee of the claimant, at an educational course on international business development is claimable expenditure if, in the Commission's opinion, it assists the claimant to carry out a qualifying export development activity. Excluded from this claimable expenditure are amounts paid as remuneration to the person undertaking the course, payments to a relative of that person or, broadly, to any body or person which is not at arm's length to the claimant. Subsection 11G(2) provides that such expenditure applies to a member of an approved joint venture or consortium as if each member were a claimant.

New

Section 11L Hotels, meals and entertainment expenses on overseas visits (\$200 a day allowance)

22. New section 11L provides for a deemed \$200 a day claimable expenditure for overseas visits, for a maximum of 21 days per visit, by a claimant or a prescribed agent or other agent of the claimant, where such visit is primarily and principally for the purpose of undertaking qualifying export development activities for the claimant. This allowance is in lieu of expenditure on hotels, meals and entertainment expenses while on such visits. The allowance is not claimable where such a visit is mainly to attend or participate in an educational course on international business development or a foreign language training course - these matters are otherwise allowed as claimable expenditure by new sections 11G and 11H respectively.

23. New subsections 11L(5) and (6) provide for the apportionment of the \$200 a day claimable expenditure between two or more claimants where the person undertaking the overseas visit undertakes qualifying export development expenditure on behalf of more than one claimant. Apportionment is to be undertaken having regard to the shares in which the claimants paid for or contributed to the traveller's fares and the time spent by that person on each claimant's behalf and any other matters which the Commission considers relevant.

New

Section 11M Amounts paid to directors

24. New section 11M reenacts existing subsection 4(7).

New

Division 3 Non-claimable expenditure

New

Section 11N Capital expenditure

25. New section 11N reenacts existing paragraph 4(2)(f) with the additional proviso that capital expenditure on maintaining a grant of registration in respect of eligible industrial property rights which have been disposed for the purpose of increasing the return from such disposal is not non-claimable expenditure.

New

Section 11P Expenses associated with International Trade Enhancement Scheme

26. New section 11P provides that expenditure is non-claimable if it is incurred in respect of an approved project or activity under the International Trade Enhancement Scheme.

New

Section 11Q Payments to approved trading house

27. New section 11Q provides that payments made to an approved trading house for the purposes of the trading house undertaking qualifying export development activity is non-claimable expenditure in the hands of the payer. The purpose of this provision is to prevent both a business using the services of a trading house and the trading house making a claim for a grant in respect of the same expenditure - any claim is thereby restricted to the approved trading house.

New

Section 11R Non-claimable expenditure: approved trading house

28. New section 11R provides that expenditure by an approved trading house in respect of eligible goods, industrial property rights and know-how is non-claimable expenditure if, in the Commission's opinion, those goods, industrial property rights or know-how were derived from, or dealt with on behalf of, an affiliated or associated company of the approved trading house.

New

Section 11S Certain travel expenses

29. New section 11S reenacts existing paragraph 4(2)(g) with the addition that accommodation and sustenance expenses that, in the Commission's opinion, are directly attributable to a person attending an educational course on international business development (as provided for in new section 11G) are a second exception to the rule set by this section that such expenses are non-claimable expenditure.

30. New subsection 11S(2) provides that the exception provided by existing subparagraph 4(2)(g)(iii) [reenacted as paragraph 11S(1)(c)] applies to expenditure of a member of an approved joint venture or consortium as if each member of the joint venture or consortium were a claimant for the grant.

New

Section 11T Expenses for first class fares

31. New section 11T reenacts existing subsection 4(2AA).

New

Section 11U Certain fares non-claimable

32. New section 11U reenacts, with the amendments set out in this and paragraph 33, existing subsection 4(4). Existing subsection 4(4) provides that where two or more relatives are travelling outside Australia at the same time, claimable expenditure in respect of fares is restricted to the claimant and permanent employees of the claimant or, if those travelling are neither of these, one of the persons travelling nominated by the claimant. New section 11U simplifies this procedure by providing that claimable expenditure in respect of fares of those travelling is restricted to employees of the claimant and such relative as is nominated by the claimant to the Commission. A proviso to this is provided by paragraph 11U(2)(c), which provides that where relatives are travelling overseas at the same time, the fares of those relatives are claimable expenditure if they do not meet at any time while overseas and before returning to Australia.

33. New subsection 11U(3) provides that section 11U applies to expenditure of a member of an approved joint venture or consortium as if that member were the claimant for the grant.

New

Section 11V Miscellaneous non-claimable expenditure

34. New section 11V reenacts existing paragraphs 4(2)(h) to 4(2)(m).

New

Section 11W Agent (other than a prescribed agent) expenses

35. New section 11W reenacts existing subsection 4(2AB).

New

Section 11X Expenditure reduced by the Commission: eligible services outside Australia

36. New section 11X reenacts existing subsections 4(2A), (2B) and (2C) and the definition of 'prescribed services in the construction industry' in existing subsection 4(8).

New

Section 11Y Expenditure associated with 'X'-rated films

37. New section 11Y reenacts, with the amendments set out in paragraphs 38 to 40 below, existing subsections 14(5) and (6) which preclude a grant being paid in respect of export expenditure incurred in the export of a film which has been, or under film classification guidelines would be, classified as an 'X' film or refused classification.

38. The amendments remove the requirement for the Commission to act as a de facto Censorship Board. Existing subsection 14(5) requires the Commission, where a film has not been classified, to determine, under film classification guidelines, whether a film would be classified as an 'X' film or refused classification. New subsection 11Y(1) provides that expenditure incurred in the export of a film is non-claimable unless the film has been classified and that classification is not an 'X' classification.

39. Films are generally promoted in the export market before completion. As films are not classified until they have been completed, new subsection 11Y(2) provides that the Commission may pay a grant in respect of an unfinished film where it has no reason to believe that the film, if completed and submitted for classification, would be refused classification or classified as an 'X' film. Where the Commission is not so satisfied, new subsection 11Y(1) would operate to make any export expenditure non-claimable.

40. New subsection 11Y(3) provides that where, because of the operation of new subsection 11Y(1), export expenditure on a film is non-claimable and that film is subsequently classified with a classification that is not 'X', then the relevant expenditure will be deemed to have occurred in the grant year when the classification is given. This provision overcomes the problem of film makers, because of long lead times between commencing a film and the classification of the final product, being precluded from obtaining a grant because of the time limits imposed by subsection 13(2A) of the EMDG Act for the lodging of claims for a grant.

New

Division 4 Qualifying export development expenditure

New

Section 11Z Qualifying export development expenditure: persons other than an approved body, an approved trading house or an approved joint venture or consortium

41. New section 11Z reenacts, with the amendments set out in paragraphs 42 to 44 below, existing subsections 4(1) [other than paragraph 4(1)(c) relating to an approved body] and 4(1A) as regards persons other than an approved body, an approved trading house or an approved joint venture or consortium.

42. New subsection 11Z(7) rectifies an anomaly in existing subsection 4(1) by making expenditure of the Commonwealth, the States, the Australian Capital Territory and the Northern Territory in relation to creating or seeking opportunities for, or creating or increasing the demand for the supply of, external governmental educational services qualifying export market development expenditure. As subsection 4(1) currently stands, such expenditure is only qualifying export development expenditure if undertaken by an approved body.

43. New subsection 11Z(9) introduces a provision which allows expenditure undertaken by a person to increase that person's return from eligible industrial property rights and know-how owned and disposed of by that person as qualifying export market development expenditure. New subsection 11Z(10) provides that the returns referred to in new subsection 11Z(9) may be by way of royalties, licence fees or in any other form.

44. New subsection 11Z(12) introduces a new provision which provides that expenditure is qualifying export development expenditure if it has been incurred to create or seek opportunities, or create or increase demand, for the supply by the person incurring the expenditure of eligible tourism services.

New

Section 11ZA Qualifying export development expenditure: approved body

45. Section 11ZA reenacts, with the amendment set out in paragraph 46 below, existing subsection 4(1)(c).

46. New subsection 11ZA(6) introduces a new provision which allows expenditure undertaken by an approved body to increase a person's return from eligible industrial property rights and know-how owned and disposed of by that person as qualifying export market development expenditure. New subsection 11ZA(7) provides that the returns referred to in new subsection 11ZA(6) may be by way of royalties, licence fees or in any other form.

New

Section 11ZB Qualifying export development expenditure: approved trading house

47. New subsection 11ZB sets out what is qualifying export market development expenditure as regards the new category of claimant, approved trading house, introduced by this Bill. Trading houses will (by new subclauses 11ZB(2), (3), (4) and (5)) be restricted to claiming for expenditure incurred in respect of the matters specified in existing paragraphs 4(1)(a) (sale for export, and export for sale, of eligible goods manufactured, produced, assembled or processed in Australia), 4(1)(d) (sale outside Australia of eligible goods manufactured, produced or assembled outside Australia from materials or parts supplied by the approved trading house) and 4(1)(h) (the disposal to persons resident outside Australia of eligible industrial property rights and know-how owned by the trading house) and subparagraph 4(1)(c)(iii) (the disposal of eligible industrial property rights and know how owned by other persons).

48. Under new subsections 11ZB(6) and (7) approved trading houses will, additionally (mirroring new subsections 11Z(9) and 11ZA(6)), be able to claim for expenditure incurred in increasing the trading house's or another person's return from eligible industrial property rights and know-how owned and disposed of by the trading house or that person as qualifying export market development expenditure. New subsection 11ZAB(8) provides that the returns referred to in new subsections 11ZAB(6) and (7) may be by way of royalties, licence fees or in any other form.

New

Section 112C Qualifying export development expenditure: approved joint ventures and approved consortia

49. New subsection 112C sets out what is qualifying export market development expenditure as regards the new categories of claimants, approved joint venture and approved consortia, introduced by this Bill. Except as set out in paragraphs 50 and 51 below, new subsection 112C reenacts existing subsection 4(1) [other than paragraph 4(1)(c) relating to an approved body] as regards an approved joint venture or consortium.

50. New subsection 112C(8) introduces a new provision which allows expenditure undertaken by a member of an approved joint venture or approved consortium to increase a member's return from eligible industrial property rights and know-how owned and disposed of by that member as qualifying export market development expenditure. New subsection 112C(9) provides that the returns referred to in new subsection 112C(8) may be by way of royalties, licence fees or in any other form.

51. New subsection 112C(10) reenacts part of existing subparagraph 4(1)(c)(ii) as regards an approved joint venture or approved consortium and provides that expenditure undertaken by an approved joint venture or approved consortium in respect of eligible external governmental educational services is qualifying export development expenditure.

New

Division 5 Reduction of qualifying export market development expenditure

New

Section 112D Reduction where expenditure is unreasonable

52. New section 112D reenacts existing subsections 4(5) and (5A).

New

Section 112E Certain qualifying export development expenditure ignored

53. New subsection 112E(1) reenacts existing paragraphs 4(1)(k) and (l).

54. New subsection 112E(2) reenacts existing paragraph 4(1A)(c) with two amendments (new paragraphs 112E(2)(b) and (c)) which include members of an approved joint venture and approved consortium and an approved trading house in the exceptions from 112E(1) (that expenditure which has been or will be paid or reimbursed is to be ignored for qualifying export development expenditure purposes) provided by this provision.

55. New subsections 112E(3) and (5) reenact, with amendments, existing subsection 4(6). The amendments (new subsubparagraphs 112E(3)(b)(ii)(D) and (H)) provide that reimbursements involving eligible external governmental educational services and eligible tourism services are, in addition to the matters directly reenacted from existing subsection 4(6), to be ignored for the purposes of determining the level of qualifying export development expenditure. New subsection 112E(4) is an interpretive provision.

Clause 7 Grants

56. Clause 7 amends section 12 of the Principal Act by adding a new subsection 12(3) which provides that a grant in respect of eligible expenditure of an approved joint venture or approved consortium is to be paid to the nominated contact member of that approved joint venture or approved consortium.

Clause 8 Claims for grants

57. Clause 8 of the Bill amends section 13 of the Principal Act by adding a new subsection 13(1A) which provides that a claim for a grant in respect of eligible expenditure of an approved joint venture or approved consortium is to be made on behalf of the approved joint venture or approved consortium by the nominated contact member.

Clause 9 58. Clause 9 of the Bill repeals section 14 of the Principal Act and substitutes a new section 14.

New
Section 14 Eligibility for grant

59. New subsection 14(1) provides that a claimant is eligible for a grant in a grant year if the claimant's eligible expenditure in that year exceeds \$30,000. This new provision is, in principle, a reenactment of existing paragraph 14(4)(b) providing a minimum eligible expenditure threshold before a grant becomes payable, with the amendment that the minimum eligible expenditure threshold is raised from \$10,000 to \$30,000.

60. New subsections 14(2) and (3) reenact existing subsection 14(1) with the amendment (new paragraph 14(3)(c)) that health care services that are eligible internal services form a further exception to the two exceptions (eligible external governmental educational services and eligible internal educational services) from the general prescription in existing section 14(1)(a) against the payment of grants to the Commonwealth, the States or a Territory. The effect of this is to put it beyond doubt that public hospitals are not excluded from receiving EMDG grants for eligible expenditure incurred in respect of health care services that are eligible internal services.

61. New subsection 14(4) reenacts existing subsection 14(2).

62. New subsection 14(5) is a new provision which provides that new subsection 14(4) (providing that a grant is not payable to a non-resident of Australia) is to be disregarded when determining if a grant is payable for eligible expenditure of an approved joint venture or approved consortium. The intent of this provision is not to discourage joint ventures and consortia between residents and non-residents of Australia

63. New subsection 14(6) reenacts existing subsection 14(3).

64. New subsection 14(7) reenacts existing paragraph 14(4)(a), providing an export earnings ceiling after which a grant no longer becomes payable, with the following amendment:

- . the export earnings ceiling is raised from \$20 million to \$25 million in a grant year.

65. New subsection 14(8) repeats new subsection 14(7) as regards approved joint ventures and approved consortia.

66. New subsections 14(9) to 14(14) are new provisions which provide that a grant is not payable, with certain exceptions, to a claimant who has received grants in respect of 8 or more grant years as follows:

- . new subsection 14(9) provides that, subject to new subsections 14(10) to (14), a grant is not payable to a claimant who has received grants in respect of 8 or more grant years;
- . new subsection 14(10) provides that new subsection 14(9) does not apply to an approved body or an approved trading house;
- . new subsection 14(11) provides that in applying new subsection 14(9) a grant received by a member of an approved joint venture or approved consortium on the joint venture's or consortium's behalf is to be ignored where a claim is made by the member on his own behalf;
- . new subsection 14(12) is the obverse of new clause 14(11) and provides that in applying new subsection 14(9), a grant received by a member of an approved joint venture or approved consortium on the member's own behalf is to be ignored where a claim is made by the joint venture or consortium;

- . new subsection 14(13) provides that new subsection 14(9) does not apply to grants received by a claimant for eligible expenditure on eligible tourism services in respect of any grant year before the grant year commencing on 1 July 1990; and
- . new subsection 14(14) provides that new subsection 14(9) does not apply to any grant year before the grant year that commenced on 20 May 1985 where the grant amount was \$3,500 or less or was paid to an educational institution specified in Schedule 7 to the Export Market Development Grants Regulations.

67. New subsection 14(15) is an interpretation provision for the purposes of new subsection 14(7).

Clause 10 Repeal and substitution of section 16

68. Clause 10 of the Bill repeals section 16 of the Principal Act, substitutes a new section 16 and inserts new section 16A.

New
Section 16 Amount of grant

69. New subsection 16(1) provides that the grant of a claimant that is not an approved body or an approved trading house is to be worked out using the provisions of new subsections 16(3), (4) and (5) - with a claimant's grant amount for a grant year being equal to the export performance adjusted grant amount determined under new subsection 16(5).

70. New subsection 16(2) provides that the grant of a claimant that is an approved body or an approved trading house is to be worked out using the provisions of new subsections 16(3) and (4) - with a trading house claimant's grant amount being equal to the ceiling adjusted grant amount determined under new subsection 16(4).

71. New subsection 16(3) provides that a claimant's provisional grant amount for a grant year is to be worked out according to a formula the effect of which is that the provisional grant amount is equal to 50% of a claimant's eligible expenditure over \$15,000 incurred in that grant year [subject to such eligible expenditure exceeding \$30,000 in that grant year as provided for by new subclause 14(1) - see paragraph 59 above]

72. New subsection 16(4) provides that a claimant's ceiling adjusted grant amount is the claimant's grant ceiling [proposed new definition in section 3(1) of the Principal Act inserted by subclause 3(6) of the Bill - see paragraph 4 above] if the provisional grant amount is greater than the grant ceiling and the claimant's provisional grant amount in any other case.

73. New subsection 16(5) provides the final steps in the procedure for determining the grant of a claimant (other than an approved trading house) by providing the means to work out the claimant's export performance adjusted grant amount as follows:

- . if the grant year is the claimant's first or second grant year the export performance adjusted grant amount is equal to the claimant's ceiling adjusted grant amount (new paragraph 16(5)(a));
- . if the grant year is the claimant's third or later grant year the claimant's export performance adjusted grant amount is determined by:
 - . having regard to the claimant's export earnings for that grant year (new subparagraph 16(5)(b)(i));
 - . determining the percentage to be applied to the export earnings for that grant year, from the table at the end of new subsection 16(5), having regard to the number of grants received or receivable by the claimant (new subparagraphs 16(5)(b)(iii) and (ii));
 - . applying the above percentage to the claimant's export earnings to determine the claimant's export performance limit (new subparagraph 16(5)(b)(iv));
 - . comparing the claimant's ceiling adjusted grant amount with the export performance limit (new subparagraph 16(5)(b)(v)), and if:
 - . the ceiling adjusted grant amount is greater than the export performance limit, the export performance limit is the performance adjusted grant amount (new subparagraph 16(5)(b)(vi)) - this is the claimant's grant amount for that grant year ; or
 - . the ceiling adjusted grant amount is less than or equal to the export performance limit, the ceiling adjusted grant amount is the export performance adjusted grant amount (new subparagraph 16(5)(b)(vii)) - this is the claimant's grant amount for that grant year.

74. New subsection 16(6) provides that, in determining the number of grant years a claimant has had for the purposes of new subparagraph 16(5)(b)(ii), grants received by a claimant for eligible expenditure on eligible tourism services in respect of any grant year before the grant year commencing on 1 July 1990 are to be disregarded.

75. New subsection 16(7) provides that, in determining the number of grant years a claimant has had for the purposes of new subparagraph 16(5)(b)(ii), grants received by a claimant in any grant year before the grant year that commenced on 20 May 1985 where the grant amount was \$3,500 or less or was paid to an educational institution specified in Schedule 7 to the Export Market Development Grants Regulations is to be disregarded.

New

Section 16A Carry forward of unmatched eligible expenditure

76. New section 16A allows a claimant to carry forward eligible expenditure unmatched by export earnings in any grant year for a maximum of two years. This only becomes relevant in a claimant's third or subsequent grant year when the amount of a claimant's grant is dependent, amongst other things, on the export earnings received by the claimant in the relevant grant year (see new subsection 16(5) and paragraph 73 above). This new provision takes account of the fact that many exporters face considerable delays between incurring eligible expenditure and achieving resultant overseas sales - as a result of this provision such expenditure will not automatically be foregone for grant purposes for at least two further grant years. Under this provision however, a claimant will not be able to claim any carry forward unmatched eligible expenditure so as to exceed the claimant's grant ceiling [\$250,000 for all claimants other than approved trading houses].

Clause 11

Change in ownership of business etc.

77. This clause amends section 19 of the EMDG Act by inserting new paragraphs 19(f) and (g) the effect of which is to enable the Commission, on the change in ownership of a business, to treat any aspect of the business, including any legal relationships, which was carried on by the original owner as having been carried out by the new owner. The purpose of these amendments is to strengthen section 19 of the EMDG Act to counter possible measures by persons, by changes in the ownership of a business, to overcome the grant limiting provisions of the Act, such as the limitation of eight grants and the export performance limiting factor on grants in a claimant's third and subsequent grant years.

Clause 12 Review of decisions of Commission

78. Clause 12 amends section 40A of the Principal Act to add to the decisions of the Commission which are subject to external review by the Administrative Appeals Tribunal. The additional matters subject to review are the refusal to approve an application as, and the cancellation of approval of, an approved trading house, an approved joint venture or an approved consortium. A Commission refusal to grant an application to vary the approval of an approved joint venture or approved consortium is also reviewable.

Clause 13 This clause insert new sections 40BA to 40BG into the Principal Act.

New
Section 40BA Approval and cancellation of approval of trading houses

79. New section 48BA provides that the Commission may approve, and cancel the approval, of a trading house for the purposes of the Act.

New
Section 40BB Approval mechanism: trading houses

80. New section 40BB provides that an application for approval as a trading house must be made in writing in accordance with a form approved by the Commission. The Commission, in considering an application, must have regard to its guidelines issued under new section 41. The Commission must make a decision on an application within 90 days of its receipt, although this timelimit is suspended pending the receipt of written answers to any questions on the application by the Commission, which questions the Commission may only ask within 30 days of receipt of the application.

New
Section 40BC Cancellation of approval as an approved trading house

81. New section 40BC provides that the Commission must have regard to the guidelines issued under new section 41 in determining whether an approved trading house's approval should be cancelled. Where the Commission determines that approval should be cancelled, the approved trading house must be notified in writing of this opinion, setting out the reason, and invited, within 30 days, to make a submission in respect of the matter. The Commission must, in deciding whether to cancel the approval, have regard to any such submission made within the specified 30 day period.

New

Section 40BD Approval, variation and cancellation of approval of joint ventures and consortia

82. New section 40BD provides that the Commission may approve, vary the approval and cancel the approval of a group of persons as an approved joint venture or approved consortium for the purposes of the Act. A variation of approval may be as to an approved joint venture's or approved consortium's:

- . approved activity, project or purpose;
- . the members constituting the approved joint venture or approved consortium; and
- . the nominated contact member.

New

Section 40BE Approval mechanism: joint ventures and consortia

83. New section 40BE provides that an application for approval as a joint venture or approved consortium must be in writing in accordance with a form approved by the Commission. The Commission, in considering an application, must have regard to its guidelines issued under new section 42. The Commission must make a decision on an application within 90 days of its receipt, although this timelimit is suspended pending the receipt of written answers to any questions on the application by the Commission, which questions the Commission may only ask within 30 days of receipt of the application.

New

Section 40BF Variation of approval as an approved joint venture or approved consortium

84. New section 40BF provides that an approved joint venture or approved consortium may apply to the Commission to vary its approval. The Commission must have regard to the guidelines issued under new section 42 in determining whether an approved joint venture's or approved consortium's approval should be varied.

New

Section 40BG Cancellation of approval as an approved joint venture or approved consortium

85. New section 40BG provides that the Commission must have regard to the guidelines issued under new section 42 in determining whether an approved joint venture's or approved consortium's approval should be cancelled. Where the Commission determines that approval should be cancelled, the approved joint venture or approved consortium must be notified in writing of this opinion, setting out the reason, and invited, within 30 days, to make a submission in respect of the matter. The Commission must, in deciding whether to cancel the approval, have regard to any such submission made within the specified 30 day period.

Clause 14 Clause 14 inserts new sections 41 and 42 into the Principal Act.

New
Section 41 Commission must issue guidelines governing grant and cancellation of approval of a person as an approved trading house and new business of an approved trading house

86. New section 41 provides that the Commission must issue guidelines relating to the exercise of its powers under new section 40BA. These guidelines must be approved by the Minister, be published in the Gazette, be issued within 90 days of the commencement of new section 41 and made available free of charge. The guidelines may include the criteria to be met by a person who wishes to become an approved trading house, the grounds on which approval may be cancelled and the matters which the Commission may have regard to in determining whether the activities of an approved trading house constitute new business for the purposes of the EMDG Act. The guidelines are subject to Parliamentary disallowance.

New
Section 42 Commission must issue guidelines governing grant, variation and cancellation of approval of a group of persons as an approved joint venture or approved consortium

87. New section 42 provides that the Commission must issue guidelines relating to the exercise of its powers under new section 40BD. These guidelines must be approved by the Minister, be published in the Gazette, be issued within 90 days of the commencement of new section 42 and made available free of charge. The guidelines may include the criteria to be met by a group of persons who wish to become an approved joint venture or approved consortium and the grounds on which approval may be cancelled. The guidelines are subject to Parliamentary disallowance.

Clause 15 Regulations

88. Clause 15 amends section 43 to enable regulations to be made declaring services as, respectively, eligible internal services or eligible tourism services.

Clause 16 Consequential and minor amendments

89. Clause 16, by a Schedule to the Bill, makes some consequential and minor amendments to the Principal Act.

