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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRAINING GUARANTEE (ADMINISTRATION) AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Schools,
Vocational Education and Training, the Hon Ross Free MP)



TRAINING GUARANTEE (ADMINISTRATION) AMENDMENT BILL 1993

GENERAL OUTLINE

This Bill amends the Training Guarantee (Administration) Act 1990 to give effect to undertakings made by the Government in the context of the 1993 election in relation to the carry forward of excess expenditure and the treatment of training subsidies. It also: makes provision for an employer to make up a training guarantee shortfall in the year following the shortfall; doubles the minimum allowable apprentice or trainee amount; removes the age restriction on student work experience; updates and widens access to the grouping provisions of the Act; clarifies the meaning of eligible training program; expands the meaning of eligible training expenditure; and updates the provisions in relation to liquidators to recognise administrators appointed under the Corporations Law.

The Bill provides employers with increased flexibility to plan training expenditure by providing for excess eligible expenditure to be carried forward to cover a shortfall in the following year.

Another provision of the Bill gives employers who declare a shortfall the option of either paying the shortfall by 30 September or electing to make it up through additional eligible training expenditure in the following year. If, at the end of the following year, any part of the previous year's postponed shortfall has not been made up, then the employer will be liable to pay training guarantee charge on the outstanding amount as if it had been due on 30 September.

The Bill removes the requirement for employers to deduct training subsidies provided by Government bodies when calculating their net eligible training expenditure.

The change to the treatment of subsidies threatened to reduce the attractiveness to employers of claiming the minimum allowable apprentice or trainee amount. The Bill doubles the amount to \$2,260 for the year beginning 1 July 1993 and provides for annual updating thereafter.

The Bill removes the discriminatory requirement that students must be under the age of 21 when work experience is undertaken for the expenditure related to the work experience to be counted as eligible expenditure.

The Bill broadens the range of entities that can be included in a business group for the purposes of the Act, and clarifies aspects of the administration of the grouping arrangements. For technical reasons, employers exercising the grouping provisions are precluded from accessing the new carry forward provisions.

The Bill clarifies the requirements for a structured training program by specifying that the person or persons who design or approve the program must, between them, have a working knowledge of the subject area of the program and the skills necessary to design or conduct the relevant type of training program.

The Bill extends the concept of eligible training expenditure to include depreciation, rental and hire or lease expenses on property or equipment for any part of the year during which the employer used the property or equipment solely or principally for activities related to eligible training programs.

The Bill updates the provisions of the Act relating to the recovery of training guarantee charge to require that persons who are appointed under the corporations law as administrators of employers that are companies must, within 14 days of their appointment, give written notice of the fact to the Commissioner of Taxation.

FINANCIAL IMPACT STATEMENT

It is not expected that any additional funds will be required as a result of these amendments to the Training Guarantee (Administration) Act, nor that any additional demands will be made on the Training Guarantee Fund.

NOTES ON CLAUSES

Clause 1 - Short Title, etc.

This clause provides that the Act may be cited as the Training Guarantee (Administration) Amendment Act 1993. The clause also identifies the Principal Act as the Training Guarantee (Administration) Act 1990.

Clause 2 - Commencement

This provides that the Act commences on the day of Royal Assent.

Clause 3 - Interpretation

This clause amends and inserts a number of definitions used in the Act, which are required as a result of other amendments, notably:

- . the removal of the requirement to deduct training subsidies when calculating net eligible training expenditure makes it necessary to amend the definition of "reimbursement" in Section 4 of the Principal Act by specifying that it does not include a "subsidy";
- . a definition of "business group" as having the meaning given by proposed section 4AA is inserted; and
- . a definition of "entity" as meaning a person defined by the definition of person in Section 4 and section 11A but not including a body politic is also inserted.

Clause 4 - Interpretation - meaning of "business group"

This clause broadens the range of entities that can be included in a business group. Proposed section 4AA sets out the tests for deciding whether corporations and other entities can make up a business group.

Proposed paragraph 4AA(1)(a) provides that a corporation and all corporations that are its subsidiaries can make up a business group.

Proposed paragraph 4AA(1)(b) provides that entities may make up a business group if they meet the tests of 'control'.

Proposed subsection 4AA(2) provides that the test of whether one corporation is a subsidiary of another is the same as that set out in the Corporations Law.

Proposed subsection 4AA(3) provides that the 'control' test is the same as that which would be used in Part 3.6 of the Corporations Law.

Proposed subsection 4AA(4) defines terms used in the section.

Clause 5 - Interpretation-meaning of "minimum allowable apprentice or trainee amount"

This clause amends section 6 of the Principal Act by providing that the minimum allowable apprentice or trainee amount will be \$2,260 for the year commencing 1 July 1993 and will be updated annually by the indexation factor defined in Section 5.

Clause 6 - Election by members of business group

This clause amends section 12 of the Principal Act to reflect the changes in the meaning of "business group" flowing from proposed section 4AA and to clarify aspects of the administration of the grouping arrangements.

Paragraph 6(a) amends subsection 12(1) to reflect the changes flowing from proposed section 4AA and amends subsection 12(2) to remove the requirement that a grouping election should be forwarded to the Commissioner for Taxation (the Commissioner).

Paragraph 6(b) amends subsection 12(3) to reflect the changes flowing from proposed section 4AA.

Paragraph 6(c):

- . omits subsections (4) and (5) as a consequence of proposed section 4AA;
- . inserts new subsection 12(4) which provides that members of a business group must be related at 30 June;
- . inserts new subsection 12(5) which provides that an entity cannot elect to be a member of a business group while an election to be part of another business group is in force; and
- . replaces subsection 12(6) with a similar provision reflecting the changes flowing from proposed section 4AA.

Paragraph 6(d) replaces subsection 12(8) with a provision which:

- . specifies that entities that have elected to group cannot take advantage of the provisions relating to a training guarantee excess or a shortfall postponement; and
- . provides that employers who wish to apply as a group for Outstanding Trainer Status should use the provisions in Regulations made for that purpose.

Clause 7 - Training guarantee excess

This clause inserts proposed section 14A, which defines the excess for a year as the net eligible training expenditure minus the minimum training requirement.

Clause 8 - Application of training guarantee excess
Employer may postpone training guarantee
shortfall until next year
Effect of Election

This clause inserts sections which make provision for the application of the excess and for an employer to elect to postpone a training guarantee shortfall until the next year and specifies the effect of such an election.

Proposed section 15A specifies how training guarantee excess is to be applied.

Proposed subsection 15A(1) limits the application of the section to employers who have a training guarantee excess in a year and a shortfall in the following year.

Proposed subsection 15A(2) provides that where the excess is equal to or greater than the shortfall, then the shortfall is reduced to 0 and the excess is reduced by the amount of the shortfall.

Proposed subsection 15A(3) provides that where the excess is less than the shortfall, then the shortfall is reduced by the amount of the excess and the excess is reduced to 0.

Proposed section 15B provides that an employer who has a shortfall may elect to postpone it until the next year and sets out the conditions under which the employer may do so.

Proposed subsection 15B(1) provides that an employer may elect to postpone a shortfall until the next year.

Proposed subsection 15B(2) requires that an election be made by giving written notice to the Commissioner by 30 September of the next year or such later date as the Commissioner allows.

Proposed subsection 15B(3) provides that an election cannot be revoked after 30 September in the next year unless the Commissioner allows.

Proposed subsection 15B(4) provides that an employer cannot elect to postpone a shortfall in consecutive years.

Proposed section 15C specifies the effect of an election to postpone shortfall.

Proposed subsection 15C(1) provides that where an employer elects to postpone a shortfall, training guarantee charge is not payable except as provided in this section.

Proposed subsection 15C(2) provides that where an employer has a training guarantee excess in the next year that is equal to or greater than the postponed shortfall, then the shortfall is reduced to 0 and the training guarantee excess is reduced by the amount of the shortfall.

Proposed subsection 15C(3) provides that where the employer's excess in the following year is less than the postponed shortfall, then the shortfall is reduced by the amount of the excess, training guarantee charge is payable on the reduced shortfall which is taken to have become due and payable on the day when it originally would have been payable or on such later day as the Commissioner allows and the excess is reduced to 0.

Proposed subsection 15C(4) provides that where there is no excess in the following year, training guarantee charge is payable on the postponed shortfall which is taken to have become due and payable on the day when it originally would have been payable or on such later day as the Commissioner allows.

Proposed subsection 15C(5) provides that if an employer is not liable to pay a training guarantee charge in the year following a postponed shortfall then the employers training guarantee excess in that year is equal to its eligible training expenditure in that year.

Proposed subsection 15C(6) specifies that if an employer makes a grouping election in relation to a year following a shortfall, then training guarantee charge becomes payable on the day of the grouping election or on such later day as the Commissioner allows.

Proposed subsection 15C(7) provides that the employer's obligation to lodge a training guarantee statement is unaffected by this section.

Proposed subsection 15C(8) provides that the employer's obligation to lodge a training guarantee statement is unaffected by this section.

Clause 9 - Exemption for outstanding trainers

This clause replaces subsection 18A(4) with a similar provision reflecting the changes made in sections 4AA and 12.

Clause 10 - Meaning of net eligible training expenditure

This clause removes the requirement to deduct subsidies when calculating net eligible training expenditure by deleting the words "subsidies and" (whenever occurring) in subsections 24(1) and 24(3) of the Principal Act.

Clause 11 - Examples of eligible training expenditure

This clause widens the expenditure that employers may claim as eligible training expenditure.

Paragraph 11(a) amends paragraphs 26(1)(j) and (k) of the Principal Act to provide that eligible training expenditure includes expenditure that is incurred in relation to rent for a building or the hire or lease of equipment and is directly attributable to a period in which the building or equipment is used solely or principally for eligible training; and

Paragraph 11(b) amends subsection 26(2) to remove an anomaly which denied allowable depreciation to employers that were not subject to income tax.

Clause 12 - Eligible training expenditure consisting of depreciation in respect of certain property

This clause provides that, where an employer incurs expenditure that is not eligible training expenditure but is directly attributable to the acquisition, construction, extension, alteration or improvement of depreciable property and the property is used during some or all of a year solely or principally for purposes related to eligible training programs, it may claim depreciation for the period where it is used for those purposes.

Proposed subsection 26A(1) establishes the eligibility of the expenditure.

Proposed subsection 26A(2) sets out the formula for calculating the amount of the eligible training expenditure.

Clause 13 - Meaning of eligible training program

This clause amends paragraph 27(2) (a) of the Principal Act by omitting the words "is appropriately qualified or experienced to design a training program of the relevant type" and substituting "has, or by 2 or more persons who together have, a working knowledge of the subject area of the program and the skills necessary to design or conduct the relevant type of program.

Clause 14 - Meaning of eligible training program - work experience etc. for students and teachers

This clause removes the age restriction for student work experience by omitting paragraph 27A(1) (e) of the Principal Act.

Clause 15 - Requirements for training guarantee statements

This clause amends section 42 of the Principal Act to take account of the new provisions relating to training guarantee excess and postponement of shortfall.

Clause 16 - Further training guarantee statements about postponed training guarantee shortfall

This clause inserts proposed section 42A which requires employers who postpone a shortfall to lodge a further statement for the year following the shortfall.

Clause 17 - Recovery of training guarantee charge

This clause amends Section 78 of the Principal Act to reflect recent changes to the Corporations Law. It requires that persons who are appointed under the Corporations Law as administrators of employers that are companies must, within 14 days of their appointment, give written notice of the fact to the Commissioner.

Clause 18 - Failure to provide statements or information

This clause amends section 84 of the Principal Act to reflect the new provisions relating to training guarantee excess and shortfall.

Clause 19 - Application of amendments

This clause provides that amendments made by this Act, other than sections 12 and 17, have application for the year commencing on 1 July 1993 and for each subsequent year.

Subsection 19(2) specifies that section 26A of the Principal Act as amended by this Act applies to capital expenditure incurred by an employer at any time but that it applies only for the purpose of calculating the employer's net eligible training expenditure in a year beginning on or after 1 July 1993.

Subsection 19(3) specifies that an election in relation to the year beginning 1 July 1993 that was made under Section 12 of the Principal Act before the commencement of the Act has effect as if it had been made under the amended Act.



