



EMPLOYMENT INCENTIVE ASSISTANCE ACT 1984

No. 106 of 1984

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SCHEDULE 1 GROUPING PROVISIONS

AN ACT to authorize the provision of financial assistance to employers for the purpose of providing them with incentives to employ as additional full-time employees certain persons who have previously been unemployed for a certain period.

[Royal Assent 21 December 1984]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Employment Incentive Assistance Act* 1984. Short title.

Commence-
ment.

2—This Act shall be deemed to have commenced on 12th September 1984.

Interpretation.

3—(1) In this Act, unless the contrary intention appears—

“employer” means an employer, other than a local authority or a State authority within the meaning of the *Audit Act* 1918, who employs any of the following kinds of employees:—

- (a) employees in respect of whom he is required to hold a subsisting policy of insurance under section 34 (1) of the *Workers' Compensation Act* 1927;
- (b) employees in respect of whom he holds a subsisting exemption granted under section 34 (4) of that last-mentioned Act exempting him from holding such a policy of insurance in respect of those employees;
- (c) outworkers within the meaning of that last-mentioned Act;
- (d) persons referred to in section 4 (3) (g) of that last-mentioned Act;

“employment establishment”, in relation to an employer, means the number of full-time positions in Tasmania held by employees in a business which he manages, controls, or owns;

“full-time position” means a position held by an employee pursuant to a contract of service or apprenticeship under which the employee is engaged in work for an employer—

- (a) in a case where an award or industrial agreement prescribes the ordinary hours of that work in each period that comprises a pay period—for the minimum number of those ordinary hours in each day required to be worked in that period; or
- (b) in any other case—for 8 ordinary hours in each day (other than a Sunday or bank holiday within the meaning of the *Bank Holidays Act* 1919) in each such period or such other hours as the Minister may determine;

“grant” means a grant under this Act;

“grant agreement” means an agreement under section 6 (1) (a) entered into by the Minister and an employer;

“ordinary hours”, in relation to a full-time position held by an employee, means hours worked at other than penalty rates;

“unemployed person” means a person who was, for a continuous period of 3 months immediately preceding the commencement of his employment by an employer pursuant to a contract of service or apprenticeship entered into as provided in section 6 (2) (a)—

(a) registered for full-time work with the Commonwealth Employment Service;

(b) participating in—

(i) the Community Youth Special Projects Scheme of the Commonwealth;

(ii) an employment training programme conducted by an educational institution in Tasmania, being a programme approved by the Minister by notice in writing pursuant to subsection (2) (a);

(iii) a Commonwealth Community Employment Programme; or

(iv) a Commonwealth employment scheme or programme approved by the Minister by notice in writing pursuant to subsection (2) (b); or

(c) registered as mentioned in paragraph (a) and participating in a scheme, or a programme, referred to in paragraph (b).

(2) The Minister may, by notice in writing—

(a) approve an employment training programme for the purposes of paragraph (b) (ii) of the definition of “unemployed person” in subsection (1); and

(b) approve a Commonwealth employment scheme or programme for the purposes of that definition, being a scheme or programme that is similar to a scheme or programme specified in paragraph (b) (i) or (iii) of that definition.

Power of
Minister to
make grants.

4—(1) Subject to this section, the Minister may, with the approval of the Treasurer, make a grant to an employer who—

- (a) on or after 12th September 1984, increases his employment establishment by creating a full-time position for an unemployed person; and
- (b) applies for the grant in accordance with section 5.

(2) The Minister shall not make a grant to an employer to whom subsection (1) applies unless he is satisfied that—

- (a) the employer has increased his employment establishment as mentioned in that subsection;
- (b) the full-time position created as the result of that increase provides a genuine opportunity for the employment of an unemployed person, being employment that will be of benefit to the State;
- (c) the employer is not receiving any major assistance, whether financial or otherwise, under any other Act; and
- (d) the employer is not receiving a grant under a Commonwealth Community Employment Programme or a similar Commonwealth employment programme approved by the Minister by notice under section 3 (2) (b) in respect of the full-time position to which the application relates or in respect of a person to be appointed to that position.

(3) For the purpose of determining whether there has been an increase in the employment establishment of an employer by whom an application for a grant is made—

- (a) if the employer carries on business on his own account—the Minister shall have regard as to whether or not there has been a decrease in the employment establishment of any other business which that employer manages, controls, or owns;
- (b) if the employer is a member of a group of persons who carry on business—the Minister shall have regard as to whether or not there has been a decrease in the employment establishment of any other member of the group; and

- (c) if the employer is a member of a group of persons who carry on business and, during the period commencing on 12th September 1984 and ended on the day on which the application is made (in this section referred to as “the prescribed period”), the employer or any other member of the group has sold or otherwise disposed of the whole or part of any business which he operated on 12 September 1984—the Minister shall have regard as to whether or not the whole or part of the business that has been sold continues to operate as a going concern.
- (4) If an employer by whom an application for a grant is made—
- (a) being a person who carries on business on his own account, acquires another business during the prescribed period, the number in the employment establishment of that other business, as at 12th September 1984, shall, for the purposes of the determination of the number of grants to which the employer is entitled under this Act, be deducted from the number of the employment establishment of the employer at the date on which he makes the application; or
- (b) being a person who is a member of a group of persons who carry on business and the employer or any other member of the group acquires another business during the prescribed period—
- (i) where the other business is acquired by the employer—the number in the employment establishment of that other business, as at 12th September 1984, shall, for the purposes of the determination of the number of grants to which the employer is entitled under this Act, be deducted from the number of the employment establishment of the employer at the date on which he makes the application; or
- (ii) where the other business is acquired by another member of the group—the number in the employment establishment of that other business, as at 12th September 1984, shall, for the purposes of the determination of the number of grants to which the employer is

entitled under this Act, be deducted from the number of the employment establishment of that other member of the group at the date on which the employer makes the application.

(5) For the purposes of this section, the question of whether or not a number of persons constitutes a group or of whether or not an employer is a member of such a group, shall be determined in accordance with Schedule 1.

Applications
for grants.

5—(1) An application by an employer for a grant shall be—

- (a) in accordance with a form approved by the Minister; and
- (b) verified, as required by the application, by a statutory declaration by the employer or, if the employer is a corporation, by an officer of the employer.

(2) A person who, in an application, makes a statement that, to his knowledge, is false or misleading as to a material particular is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000.

(3) Where a person is convicted of an offence under subsection (2) in relation to an application for a grant—

- (a) if the application has not been granted when that person is convicted—the applicant ceases to be eligible for a grant under this Act; or
- (b) if the application has been so granted—the grant to the employer who made the application shall be forfeited and any instalment of the grant that has been paid to him becomes payable immediately by that employer to the Minister.

(4) Where an offence under subsection (2) is committed by a person who is an officer of an employer which is a corporation, that corporation shall be deemed also to have committed the offence and may be convicted of the offence, whether or not that person is charged with or convicted of the offence.

(5) Any money that is payable under subsection (3) by an employer to the Minister constitutes a debt due to the Crown and may be recovered in a court of competent jurisdiction.

(6) In this section, “ officer ”, in relation to an employer which is a corporation, means a director, manager, secretary, or other similar officer of the employer.

6—(1) Where the Minister makes a grant under this Act to an employer—

Agreements to be entered into as consequence of making of grants.

(a) the Minister shall enter into an agreement with the employer to pay to him, subject to section 7 (3), the sum of \$5 000 payable, as nearly as possible, in equal instalments—

(i) the first of which is payable at the expiration of 6 months after the date of the commencement of the employment by the employer of an unemployed person in a full-time position;

(ii) the second of which is payable at the expiration of 12 months after that date; and

(iii) the third of which is payable at the expiration of 18 months after that date; and

(b) such an agreement shall be subject to such terms and conditions as are determined by the Minister and as are specified in the agreement.

(2) An employer to whom a grant is made—

(a) shall enter into a contract of service or apprenticeship for the employment of an unemployed person in a full-time position for at least 18 months;

(b) shall execute a grant agreement pursuant to which the grant shall be made; and

(c) shall, in addition to maintaining the number of positions for unemployed persons specified in the grant agreement, maintain his employment establishment at at least the same number as it was on 12th September 1984.

7—(1) Where, at the date of—

(a) the merger of the whole or part of the business of an employer with the business of another employer; or

(b) the acquisition of the whole or part of the business of an employer by another employer,

Provisions applicable to grants, &c.

there is in force a grant agreement entered into by either of those employers or there are in force grant agreements entered into by both those employers, the Minister may do such of the following things as he considers desirable:—

- (c) in the case of a grant agreement entered into by an employer the whole of whose business has been so merged or acquired, the Minister may—
 - (i) transfer to the other employer the entitlement to the grant or grants to which the agreement relates; or
 - (ii) cancel the agreement;
- (d) in the case of a grant agreement entered into by an employer part of whose business has been so merged or acquired, the Minister may—
 - (i) pay, or, as the case may be, continue to pay, to the employer the grant or grants to which the agreement relates;
 - (ii) transfer to the other employer the entitlement to that grant or those grants; or
 - (iii) cancel the agreement;
- (e) in the case of a grant agreement entered into by an employer who will carry on the business resulting from the merger or acquisition, the Minister may—
 - (i) pay, or, as the case may be, continue to pay, to the employer the grant or grants to which the agreement relates; or
 - (ii) cancel the agreement.

(2) Where, pursuant to subsection (1), the Minister cancels a grant agreement, any instalment of a grant to which the agreement relates that has been paid to the employer who was a party to that agreement becomes, if the Minister so determines, immediately payable by that employer to the Minister.

(3) Where an employer to whom a grant has been made under this Act receives any sum of money by way of a grant under a Commonwealth scheme of assistance, the amount payable as a grant under this Act shall be adjusted by deducting from the full amount of that grant an amount equal to the difference between the sum of any grants so received (including the grant under this Act) and the wages payable by the employer to the employee in respect of the period for which the grant under this Act is made.

(4) In subsection (3) “ grant ” includes subsidy and allowance.

(5) Where, while a grant agreement is in force with respect to a grant to an employer in relation to a person who is his employee under a contract of employment or apprenticeship entered into pursuant to section 6 (2) (a)—

- (a) there is a break in the course of the employee's employment for more than 4 consecutive weeks in the period of 18 months commencing immediately after the date of the commencement of that employment;
- (b) there is a vacancy in the position held by that employee on more than one occasion during that period, unless the Minister otherwise approves;
- (c) the employer contravenes or fails to comply with a term or condition to which the agreement is subject; or
- (d) the employer fails to comply with section 6 (2) (c),

any instalment of the grant paid under that agreement to the employer becomes, if the Minister so determines, immediately payable by him to the Minister.

(6) Any money that is payable under subsection (2) or (5) by an employer to the Minister constitutes a debt due to the Crown and may be recovered in a court of competent jurisdiction.

8—(1) The Under Treasurer may, by notice in writing served on an employer to whom a grant has been made, require the employer—

Power to obtain information, access to books, &c.

- (a) to furnish him with such information as he requires for the purpose of ascertaining whether the employer is complying or has complied with—
 - (i) the terms and conditions to which the grant agreement entered into by the employer is subject; and
 - (ii) the provisions of this Act in relation to the grant; and

(b) to produce to an officer of the Treasury appointed by the Under Treasurer for that purpose all books, documents, and any other papers in his possession or custody or under his control relating to, or which, in the opinion of the Under Treasurer, may relate to that grant, whether directly or indirectly.

(2) The Under Treasurer may require the information referred to in subsection (1) to be given by statutory declaration.

(3) For the purpose of ascertaining whether an employer to whom a grant has been made under this Act is complying with or has complied with the terms and conditions to which the grant agreement entered into by him is subject and the provisions of this Act in relation to the grant, an officer of the Treasury authorized by the Under Treasurer for that purpose, shall at all reasonable times have full and free access to the premises at which the employer carries on business and to the books, documents, and other papers in relation to that business kept by the employer on those premises or any other premises and for any such purpose may make extracts from, or copies of, any such books, documents, or other papers.

(4) An employer to whom a grant has been made under this Act who, without reasonable excuse—

- (a) fails or refuses to furnish any information that he is required by the Under Treasurer, by notice under subsection (1), to furnish to him;
- (b) fails or refuses to produce any books, documents, or other papers that he is required by the Under Treasurer, by such a notice, to produce to an officer of the Treasury authorized by the Under Treasurer for that purpose; or
- (c) fails or refuses to allow an officer of the Treasury authorized by the Under Treasurer for that purpose full and free access to his premises, and to his books, documents, and other papers, referred to in subsection (3) or to allow such an officer to make extracts from or copies of, any such books, documents, or other papers,

is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000.

Service of
documents.

9—(1) Where under this Act a notice is authorized to be served on an employer, the notice may be served—

- (a) in the case of a person who is neither a corporation nor a firm—
 - (i) by delivering it to him personally;

- (ii) by leaving it at that person's place of business last known to the person authorized to serve the notice with someone who is apparently employed there, being a person who has or apparently has attained the age of 16 years;
or
 - (iii) by sending it by post to that person's place of business last known to the person required to serve the notice;
- (b) in the case of a corporation—
- (i) by delivering it to the secretary of the corporation personally;
 - (ii) by leaving it at the registered office of the corporation or at the place or principal place of business of the corporation in Tasmania with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or
 - (iii) by sending it by post to the registered office of the corporation or to the place or principal place of business of the corporation; or
- (c) in the case of a firm—
- (i) by delivering it to a member of the firm personally;
 - (ii) by leaving it at the place or principal place of business of the firm in Tasmania last known to the person authorized to serve the notice with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or
 - (iii) by sending it by post to the place or principal place of business of the firm in Tasmania last known to the person authorized to serve the notice.

(2) A reference in subsection (1) to the registered office of a corporation includes a reference to a registered office that is outside Tasmania.

(3) The provisions of this section are in addition to the provisions of section 528 of the *Companies (Tasmania) Code*.

Expenses
of Act.

10—(1) Grants made under this Act shall be paid out of money provided by Parliament for the purpose.

(2) Any money appropriated by Parliament for expenditure during the financial year beginning on 1st July 1984 or a subsequent financial year for the purpose of making grants to employers as mentioned in section 4 (1) may be applied for the purpose of making grants under this Act.

Protection of
members of
Parliament.

11—A grant agreement to which a member of either House of Parliament is a party in the capacity of an employer is not a contract or an agreement with the Government of the State within the meaning of section 33 of the *Constitution Act* 1934.

Provision
for cessation
of payment
of grants.

12—(1) The Governor may, by proclamation, fix a day on and after which no further grants shall be made under this Act.

(2) Where a proclamation is made by the Governor under subsection (1) fixing a day as mentioned in that subsection, the Minister shall not make any further grants under this Act on or after that day.

SCHEDULE 1

Section 4 (5)

GROUPING PROVISIONS

1—For the purposes of section 4, 2 corporations constitute a group if they are, by reason of section 7 (5) of the *Companies (Tasmania) Code*, to be deemed, for the purposes of that Act, to be related to each other. Grouping of corporations.

2—(1) A reference in this clause to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust. Grouping of commonly controlled businesses.

(2) For the purposes of section 4, where the same person has, or the same persons have together, a controlling interest under subclause (3) in each of 2 businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subclause (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business:—

- (a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors (being a director or directors who is or are entitled to exercise a majority of voting power at meetings of the directors), of the corporation are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of that person or of those persons acting together;
- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, 50 per cent or more of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
 - (i) owns, or own together (whether or not beneficially), 50 per cent or more of the capital of the partnership; or
 - (ii) is, or are together, entitled (whether or not beneficially) to 50 per cent or more of any profits of the partnership;
- (d) a person has, or persons have together, a controlling interest in a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of 50 per cent or more of the value of the interests in the trust first-mentioned in this paragraph;

- (e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subclause (3) in a business, it shall, for the purposes of subclause (3), be deemed to have a controlling interest in any other business in which another corporation that is, by reason of section 7 (5) of the *Companies (Tasmania) Code*, to be deemed, for the purposes of that Act, to be related to it has a controlling interest.

(5) Where—

(a) a person has, or persons have together, a controlling interest under subclause (3) in a business; and

(b) the person or persons who carries or carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) shall, for the purposes of subclause (3), be deemed to have a controlling interest in the business referred to in paragraph (b).

(6) Where—

(a) a person is a beneficiary under a trust; or

(b) two or more persons together are beneficiaries under a trust, in respect of 50 per cent or more of the value of the interests in that trust and the trustee or trustees of that trust has or have under subclause (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subclause (3), be deemed to have a controlling interest in that business.

(7) For the purposes of this clause, “voting share”, in relation to a corporation, means an issued share in the corporation, not being—

(a) a share to which, in no circumstances, is there attached a right to vote; or

(b) a share to which there is attached a right to vote only in one or more of the following circumstances:—

(i) during a period during which a dividend (or part of a dividend) in respect of the share is in arrear;

(ii) on a proposal to reduce the share capital of the corporation;

(iii) on a proposal that affects rights attached to the share;

(iv) on a proposal to wind up the corporation;

(v) on a proposal for the disposal of the whole of the property, business, and undertaking of the corporation;

(vi) during the winding up of the corporation.

3—(1) Notwithstanding any other provision of this Schedule (except subclause (2)), where a person is, whether or not by virtue of this subclause, a member of 2 or more groups (each of which is in subclause (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of section 4, one group.

Smaller groups
subsumed into
larger groups.

(2) Except for the purpose of determining whether a group is constituted under subclause (1), a group which, but for this subclause, would be a smaller group ceases to be a group if its members are members of a group constituted under subclause (1).

4—The fact that a person is not a member of a group constituted under a provision of this Schedule does not prevent that person from being a member of a group constituted under another provision of this Schedule.

Grouping
provisions
to operate
independently.

5—A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and other person, may benefit under that trust shall be deemed, for the purposes of this Schedule, to be a beneficiary in respect of 50 per cent or more of the value of the interests in that trust.

Beneficiaries
under dis-
cretionary
trusts.

6—(1) Where the Minister is satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters that he considers relevant, that a business carried on by a member of a group is carried on substantially independently of, and is not substantially connected with the carrying on of, a business carried on by any other member of that group, the Minister may, by order in writing served on that first-mentioned member, exclude him from that group.

Exclusion of
persons from
groups.

(2) The Minister shall not, under subclause (1), make an order so as to exclude a person from a group on and from a date if that person is or was on that date a corporation which, by reason of section 7 (5) of the *Companies (Tasmania) Code*, is to be deemed, for the purposes of that Act, to be related to another corporation which is a member of that group.

(3) Notwithstanding any other provision of this Schedule, an order under subclause (1) shall have effect according to its tenor on and from the date specified in the order (being a date that is the date of the order or before the date of the order) as the date on and from which the person referred to in the order is or shall be deemed to have been excluded from the group so referred to.

