

# **When words aren't enough: Graphics and other innovations in legislative drafting**

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## **Introduction**

1 Before I get into the detail of “graphics and other innovations in legislative drafting”, I want to make several preliminary points.

2 First, I should point out that, in Mary Whisner’s words, “I’m not a scholar”. Rather, I am a practising legislative drafter, and this is a very practical rather than an academic paper.

3 Secondly, all of the original versions of the graphics, and all the examples of other innovations, come from recent or current Australian legislation. That is, they are not simply experimental but are actually part of Australian law. The alternative versions of some of the graphics are not included in legislation—rather, they have been concocted by me to demonstrate particular points.

4 Thirdly, you may find it useful to have some background information about my organisation and the context in which we pursue innovation in legislative drafting.

### ***Brief description of OPC***

5 The Office of Parliamentary Counsel (OPC) is one of the two drafting offices that services the Australian federal government.

6 We are a government drafting office rather than one that services a legislature. There are a small number of staff in the parliamentary service who do drafting for individual Members of Parliament, but we do all drafting for the government, and we are also routinely involved in any legislation drafted for individual Members of Parliament that is expected to pass.

7 We are one of two drafting offices providing such services. We have the luxury of only drafting primary legislation (Bills for consideration in the Parliament). The other drafting office drafts regulations and other subordinate instruments.

### **Brief history of our developing interest in plain English etc**

8 Pursuing innovative ways to improve legislative drafting hasn’t always been a high priority for Australian drafting offices, although it’s interesting to note that the first Australian federal legislative drafter, Sir Robert Garran, appointed as the head of the Attorney-General’s Department when Australia achieved federation in 1901, described his approach as follows:

Parliament having got to work, the first job for my Department was to draft the Bills necessary for a beginning. It was a thrilling experience to open a new Statute Book with the freedom that comes from not being tied to the forms and idioms of a long line of predecessors. We tried to set an example of clear, straightforward language, free from technical jargon. **[extended quote at Exhibit 1]**

9 Most recently, the pressure on Australian drafting offices to improve their drafting styles probably developed in the early 1980s. Christopher Balmford has talked a bit about the plain English “movement” in Australia, so I don’t need to say more than that OPC has been pursuing improvements in drafting style with more or less enthusiasm, and more or less success, ever since the mid-1980s.

## **Non-graphics developments**

10 The earlier developments started with improvements to our writing style, and moved from there into the area of aids to interpretation.

11 In improving our writing style, we focussed on the use of plain language, and shorter sentences with simpler sentence structures. In some legislation we draft in the second person (“You must do X”). One particular writing style development is the use in appropriate cases of what we call method statements, which take the reader step by step through a determination of entitlement or a calculation of an amount **[Exhibit 2]**. Although I think it’s bigger than a “writing style” issue, this is probably the place to mention that we have also experimented a bit with “general principles” drafting (sometimes known as “fuzzy law”) as an alternative to detailed black-letter law.

12 “Aids to interpretation” covers a range of non-graphic aids, as well as the graphics that I’ll get onto soon. Non-graphic aids to interpretation include the following:

- A range of aids aimed at giving readers a high-level understanding of the purpose, structure or operation of a piece of legislation before asking them to focus on detailed provisions. These include reader’s guides, objects provisions, summaries, outlines, and theme statements **[Exhibit 3]**.
- A range of aids aimed at giving the reader extra help in understanding particular provisions, such as notes explaining the origins of a provision, or the interrelationship between the provision and another part of the legislation **[Exhibit 4]**, and examples identifying cases intended to be covered by a provision, or worked examples showing how a provision would operate in a particular fact situation **[Exhibit 5]**.
- A method for highlighting defined terms used in legislation **[Exhibit 6]**. Terms that are defined elsewhere in the Act are identified with an asterisk, which in turn refers the reader to a footnote identifying where the definition will be found. This one almost belongs in the graphics list, because in part it is a visual clue that informs the reader without using any words, but I don’t think we need to consider it further today.

## **Graphics—explanation**

13 At this stage it’s probably worth attempting some sort of definition of what I mean by graphics in this context (and I have to say it’s pretty difficult to extract the meaning I want

from an ordinary dictionary). However, it's important to have some sort of definition, because the definition may be quite significant when you start looking at the benefits and disadvantages of using graphics.

14 "Graphics" in legislation refers to methods of representing the information you are trying to convey using visual instead of, or as well as, verbal information. In other words, the layout of the information on the page, possibly combined with non-verbal material, in itself conveys information. The information might be in addition to the information conveyed by any relevant text. More commonly, I suspect, the information might already be implicit in any relevant text but it might be quite difficult to extract from reading that text.

15 One of the important implications of this definition is that a graphic shouldn't mislead or confuse the reader through its visual effect. In other words, a graphic shouldn't use visual effects or tricks that might look as if they have significance if they really don't. This can be a real issue, given the ready availability in graphics software of an almost limitless array of options and variations. This stuff is handy if you are trying to design a page in a magazine for teenagers, but it is largely out of place, in my view, in legislative graphics—more about that later.

16 The graphics that I will refer to in the rest of this paper fall into 2 categories. Many of them are included in legislation in the hope of providing extra help to readers—for instance, they summarise or map out large chunks of legislative text with a view to giving the reader a general understanding of the material before he or she tackles the detail. Some of the tables, however, are what I would call "operative" provisions—that is, they set out the relevant law, and they are the only statement of that relevant law.

## **Graphics—testing**

17 I should mention, only to put it aside for today, the question of document testing. This paper is based almost entirely on my personal experience with the use of graphics in legislation over the last 7 or 8 years, a bit of extrapolation from the learning about reading and comprehension, and a bit of basic commonsense.

18 One thing we haven't done nearly enough of in those years is document testing, so what I won't be saying to you is "Here's a graphic, our tests have proved that this is a real help to readers". Rather than getting distracted into the practicalities of document testing and run out of time to talk about graphics, at this stage all I want to say is that there is a lot of scope for developing our ideas about graphics through more testing. Perhaps that will be something to discuss at the conference to celebrate the 2 millionth volume.

## **Graphics—how do they help?**

19 Graphics are particularly useful for identifying patterns and relationships, summarising processes, or organising large amounts of information. These might be patterns or relationships at the overview level (for instance, a graphic setting out the overall structure of a Bill on a single page), or at a much more detailed level (for instance, a table setting out the detailed implications of a particular event for several different kinds of companies). A graphic might try to show the whole of a process (for instance, how to get a patent), or only a small part of a larger process (for instance, appeal processes after an application for a patent is rejected by the registering authority).

## **Example—a table**

20 One of the simplest and probably most useful graphics, at least in legislation, is the table (in some cases also known as a matrix).

21 This table comes from our Crimes Act. It is in a part of the Crimes Act providing both authority for, and limits on, the conduct of various forensic procedures on people suspected of certain crimes. The provisions are conceptually simple, but cover a very large number of different but related cases in different ways.

- The provisions cover a large number of different forensic procedures and a smaller number of different classes of possible suspects.
- As a matter of policy, different approaches are taken to different forensic procedures, depending how intrusive they are, and different protections are provided to different classes of suspects, depending on the assumed capacity of the suspects to look after their own interests.
- The protections relate to matters such as the authority for conducting a procedure (eg is the suspect's consent enough, or is a magistrate's warrant required?), the time a suspect may be held for a procedure to be conducted, and the suspect's right to have other people present while the procedure is conducted.

22 The provisions use a series of tables to set out the rules for different aspects of the process. In some cases the tables summarise the effect of substantial quantities of legislative text, and act as a navigational aid for the reader (in effect, “if you want to conduct an intimate forensic procedure on a person under 18 years of age, you need a warrant—see section X”). This next table, however, is what I would call an operative table, in the sense that it is the only place that lays down these particular rules. The real table is nearly 2 pages long, and deals with 15 forensic procedures, some of which are better left unimagined; I have edited this one to make it easier and slightly less unpleasant to discuss **[Exhibit 7]**.

23 There are several things to note about this table.

24 First, it saves space, and it saves repetition. Here's what the first 5 lines in the table would look like in ordinary text **[Exhibit 8]**.

25 Note that the first 5 rows of the table (about half a page in table format) take about the same space on the page as the whole table when they are converted into standard text with a separate section heading for each procedure (without headings you can get the equivalent of 7 rows into the space occupied by the table, which covers 9 rows). So using standard text in this case could almost double the space used to give the same information.

26 More importantly, the table distinguishes the different cases much more clearly than the plain text. In the plain text version, every provision will start with the words “A forensic procedure involving”. In the table version, you can get straight to the description of the procedure you're looking for.

27 Similarly, having found your forensic procedure, you need to wade through “may be carried out by” in the plain text version before you get to the people who may perform it, and those people are listed, as it were, horizontally. In the table version you get straight to the list

of who may perform the procedure, and then you get a “vertical” list that clearly indicates how many separate classes of people are covered.

28 There are at least two other more subtle ways in which this table, although shorter, conveys more information to the reader than the plain text equivalent.

29 First, the series of cases in which the question “**Is suspect entitled to request presence of medical practitioner or dentist of suspect’s choice?**” is answered by “No” makes the position in those cases very clear.

30 In the plain text version there would be two ways of dealing with those cases. One way would be simply not to have any provision equivalent to subsection (2) in the Exhibit 8 examples—the reader would then have to work out the position by comparison with the provisions covering other cases, and even then wouldn’t be absolutely sure that the matter isn’t dealt with differently somewhere else. The other way would be to include provisions stating that the suspect “is not entitled” etc—the reader would need to read carefully to pick up that these provisions, unlike the ones dealing with other cases, contain the vital word “not”.

31 Secondly, the appearance of the table makes it clear, visually, that in one respect the cases covered by the table can be divided into two classes—there are 5 cases in which the suspect is entitled to have a particular kind of medical expert present, and 4 cases in which this right is not available.

32 This gives the reader a clue that the provisions recognise some policy difference between the two classes of forensic procedures. A reader who is interested in this (and not all of them will be), will probably work out fairly quickly that the last 4 forensic procedures are distinctly less intrusive than the first 5 cases—and indeed the distinction between “intimate” and “non-intimate” forensic procedures, as they are called, is also the basis of policy distinctions drawn in several other provisions in this legislation. The existence of that distinction emerges much more clearly from looking at the shape of the information included in the table than it would from reading, one after the other, the 9 separate provisions setting out the various rules for the various different procedures.

### ***Example—a decision diagram***

33 Decision diagrams help the reader understand and work through a complicated process, especially one in which there are a range of options, a range of possible pathways or a range of possible results. Sometimes people use the term “flow chart” to describe what I mean by a decision diagram; I suspect that, at least among certain groups of technical experts, the two terms mean quite different things, but for the time being let’s just live with the non-technical use of the expressions.

34 Here is a decision diagram from our Export Market Development Grants Act [**Exhibit 9**]. This is an Act that provides grants aimed at helping Australians and Australian organisations to develop and expand export markets for Australian goods. This diagram shows, in a very simplified form, the various criteria that have to be satisfied by an applicant for a grant under the legislation.

35 This diagram summarises about 45 pages of legislative text. It works by taking the reader through the eligibility criteria one by one, each expressed in the form of a question.

Each time the reader gets the “right” answer to a question, he or she can proceed to the next criterion. If a reader gets the “wrong” answer, he or she goes straight off to the box that says “No grant is payable to you”, and doesn’t need to waste any more time.

36 Clearly, no-one is going to be able to work out their eligibility for a grant just by working through this diagram. Most of the criteria rely on technical terms that are defined elsewhere in the Act (for instance, “eligible expenses” or “disqualifying conviction”), or on processes that are provided for elsewhere in the Act (for instance, an Austrade determination of entitlement). The relevant provisions of the Act are referred to in each of the question boxes, and a reader interested in eligibility for a grant will need to work through those detailed provisions to come up with a reliable answer.

37 However, a reader who starts with this diagram will get a general overview of the kinds of things that are relevant to eligibility (plus guidance about where to learn more), and quite possibly an idea of the particular criteria that might be significant to his or her chances of getting a grant. This will give the reader a mental map against which to navigate the substantial volume of detailed legislative text that follows. There is plenty of evidence in the learning about how readers read (not to mention confirmation from our own common sense) that a reader who understands roughly where he or she is going is more likely to get there, and by a less circuitous route.

## **Graphics—how they can go wrong**

38 You have probably formed the view that I am a graphics enthusiast, and in a way you’d be right. I think graphics have enormous potential to make things easier for readers of legislative text. However, I also think graphics have enormous potential to go badly wrong, and so anyone who plans to use graphics in legislative text needs to be very careful about what they use and how they use it.

### ***Reader unfamiliarity***

39 One of the problems with graphics is that some readers don’t feel comfortable with graphics—for instance, I have seen several highly intelligent lawyers get quite edgy when faced with what I would regard as a pretty straightforward table. However, this may be largely a problem of unfamiliarity, and I don’t see it as an objection to the use of graphics. On the other hand, it should be a warning to all of us not to use graphics that require any kind of specialist graphic design knowledge to interpret.

### ***Excessive or irrelevant complexity***

40 “Excessive complexity” describes a diagram that simply has too much information in it. Usually, such a diagram can conveniently be broken up into several diagrams, which might represent quite different parts of the original diagram or which might involve taking particular elements of an overview diagram down to a further level of detail. For instance, the EMDG diagram that we looked at earlier went through 8 criteria that were relevant to an applicant’s eligibility for a grant. The first 2 question boxes referred to 3 further diagrams. Here are 2 of them (the other one is a table that we can ignore for now) [**Exhibits 10 and 11**].

41 In other words, Diagrams 2 and 4 provide a more detailed explanation of 2 of the elements of the first EMDG diagram at Exhibit 9. Now, imagine if these two diagrams had

been incorporated into that first EMDG diagram. The resulting diagram would have been impossibly complicated, and of course in order to fit it all onto one page, the text in the boxes would have had to be reduced to an almost unreadably small font. However, when the information being conveyed is divided between the 3 diagrams, each diagram is relatively easy to follow and gives the reader a useful overview of its subject-matter.

42 Diagrams that I would describe as irrelevantly complex are a little different, although they may also be excessively complex. A diagram is irrelevantly complex if its complexity arises from elements of the diagram that have no relevance to the information sought to be conveyed. This kind of complexity usually arises from inexperience or other lack of skill on the part of the designer. The best examples of irrelevant complexity are diagrams that use visual tricks for no reason other than that the diagramming software offers them.

43 For instance, the 3 EMDG diagrams we've just looked at use 2 different styles of boxes—in each diagram, the boxes that take the reader through the criteria or the operation of the legislation are plain, white-background, rectangles, while the boxes that set out the results of progress through the diagram (eg that a grant is or is not available) are the same except that they have a lightly-shaded background.

44 Now imagine how those diagrams would work if instead, every box in each diagram used a different style—so that, for instance, the first EMDG diagram looked like this **[Exhibit 12]**.

45 Is there any chance at all that readers would manage to work out the real message sought to be conveyed by this diagram, or would they spend a very frustrating time puzzling over what messages were being conveyed by the different appearances of the various boxes and arrows, and finally give up in distress (and probably disgust)?

### ***Misuse of tables***

46 Tables are very useful for organising certain kinds of material, but they shouldn't be used for organising certain other kinds of material. There may be technical terms that I don't know for the two kinds of material, but for the moment some examples might help explain what I'm getting at. One kind of material that can really benefit from being organised into a table is the kind we discussed in the context of forensic procedures—material relating to lots of different cases where there will be different results to different questions about different classes of those cases.

47 On the other hand, material that really just consists of a series of pieces of text plus headings rarely benefits from inclusion in a table. In general, in fact, this is a bad use of a table. First, the headings column is likely to contain a lot of wasted space (because the text in the other column is likely to run much further down the page). Secondly, if there are no patterns in the text (eg because the text deals with a series of different matters that, for instance, have only a chronological relationship), then there is nothing particular to be revealed by the use of the table format. Thirdly, if there are minor patterns, spreading the relevant text over more pages (because of the waste of the heading column) will obscure rather than reveal those patterns.

48 Here are some provisions out of the EMDG Act dealing with disqualified individuals preparing grant applications. This is what the legislative text actually looks like **[Exhibit 13]**.

49 This is what it would look like in a table [Exhibit 14].

50 You can see how putting this particular legislative text into a table doesn't do anything to improve its readability. Although the material in each form fits fairly into pretty much the same vertical space, this is only managed for the table because we use a smaller font for our standard table format than for plain legislative text (10 point rather than 11 point).

51 The substantial amounts of white space in the first and second columns are paid for in the third column, where the material (and this is the substantive material that the reader does need to master eventually) is very crowded. In particular, this material gets no benefit from the hierarchical use of vertical space in our standard text (different vertical spacing is used to show the relative importance, and the relationships, between various text units).

52 The table form doesn't do anything to reveal any kinds of patterns or links between the various topics dealt with in the table. This is because there aren't any particular patterns—and the link is simply that the provisions follow each other sequentially.

53 Also, you can see that if there **were** any significant patterns linking the various topics, it would still be hard to recognise them, because there is so much text in each row of the third column, and so much of it is necessarily different—the amount of different text would obscure any patterns that did exist in that material.

### ***Lack of verbs***

54 Another important way in which graphics can go wrong is that graphics don't require verbs in the way ordinary legislative text does. A lot of useful work has been done, and published, about the importance of verbs in any kind of writing, not just legislative writing, that is intended to affect people's behaviour. Because it is relatively easy to produce a graphic without any useful verb, graphics have the potential to be far more difficult for readers than properly constructed legislative text.

### **Tables**

55 For instance, many tables, like other graphics, only have implicit verbs. If a reader infers the verb correctly, he or she will be able to read the table—but if the implicit verb is not clear, the reader will have problems.

56 When tables are used in legislation, drafters need to ensure either that the text introducing the table clearly explains the table's operation, or that the table itself does so.

57 As an example of the first approach, here are the introductory provisions for the forensic procedures table we looked at earlier [Exhibit 15]. Although that table had reasonably good information in its headings, these provisions make it absolutely clear what the table is doing or, in other words, what the table's verbs are.

58 Subsection (1) explains **both** that the table shows who may conduct the various procedures, **and** that anyone not listed in the table can't carry out these procedures. Subsection (2) expands the heading to the third column to specify that the column shows the cases in which the suspect may ask for certain kinds of medical experts to be present while a



procedure is conducted, and then refers the reader to another provision that sets out the practical consequences of such a request.

59 We have also devised a table technique that can be used to include the necessary verbs in the table itself. Here is an example from our Corporations Act (ASIC is our corporations regulatory authority) [**Exhibit 16**].

60 You will see that the template sentence, with its verb (“must notify”) appears as the heading to the various columns, so that the reader doesn’t have to infer anything about the significance of the material in each of the columns and, in particular, the reader doesn’t have to infer the verb. It is clear on the face of the table what the table is doing.

### **Other graphics**

61 An absence of express verbs can be an even more dramatic problem with other graphics. It is very important to ensure that a diagram has either a clear explanation of what it does, and how to use it, in its covering text, or that the information is absolutely clear within the diagram. My own feeling is that it is so difficult to ensure that the information is clearly set out within a non-tabular diagram that the covering text should always contain a good explanation, supplemented if possible by a heading to the diagram.

62 For instance, what would you make of this diagram [**Exhibit 17**] without any kind of covering text or heading?

63 This diagram, in fact, is one which doesn’t need a very active verb, since it’s a form of conceptual map—but even then, if the reader doesn’t know what he or she is supposed to be learning from this diagram, it will be not just fairly useless but potentially distracting and frustrating.

64 Here is the covering text for the diagram [**Exhibit 18**].

65 The last sentence provides the verb for this diagram: from this sentence, the reader discovers the significance of the visual effect (the pyramid), the significance of the various topics referred to in different parts of the pyramid, and the significance of where in the pyramid those topics appear.

### ***Graphics out of context***

66 A lot of the graphics that drafters want to put into our Bills emerge from the pre-drafting discussions between drafters and instructors during which policy details are developed or clarified and legislative structures created. The drafters commonly use whiteboards as an aid in such discussions, and in particular produce whiteboard diagrams to help clarify and record those discussions.

67 However, problems can arise if the drafters or instructors then seek to use those diagrams in the resulting draft Bill. This is because the diagrams have been developed in an environment that provides a large amount of context and explanation for the participants, but there is no guarantee that this context and explanation will be available to a reader of the Bill. In fact, you can pretty well guarantee that it won’t (in my experience, it’s often not all that available to the participants as soon as they move onto something else).

68 The difficulty is, of course, that the drafters and their instructors may feel that their diagram provides a useful explanation of some aspect of the draft Bill, without realising just how much of its value for them is attributable to their participation in developing the diagram in the first place. Of course, drafters always have difficulty in assessing how well their writing communicates their message (because they know what they mean), but the risks may be even greater in relation to graphics.

### **Graphics—a high risk strategy**

69 In summary, then, I would suggest that using graphics in legislation is a high risk strategy. The potential pay-offs are high, but so are the risks.

70 In saying that, I don't mean to suggest that using graphics is a dangerous strategy that should be avoided. What I mean is that it is important to identify the cases in which there are worthwhile things to be achieved through using graphics, and to use graphics in those cases, while taking care to minimise the risks in those cases. On the other hand, drafters certainly shouldn't litter their work with more or less random graphics just to make their drafting look innovative.

## Exhibits

### Exhibit 1—Extract from *Prosper the Commonwealth*, Robert Garran

Parliament having got to work, the first job for my Department was to draft the Bills necessary for a beginning. It was a thrilling experience to open a new Statute Book with the freedom that comes from not being tied to the forms and idioms of a long line of predecessors. We tried to set an example of clear, straightforward language, free from technical jargon. I had with me a skilful and experienced draftsman in Gordon Harwood Castle from Adelaide. We began with a set of Customs and Excise Bills in collaboration with C. C. Kingston, Minister for Customs, himself a fine, if unconventional, draftsman. We took the existing models for such Bills and cut them to the bare bone and made them like a drawing by Phil May, with every superfluous line rubbed out. Mr Justice O'Connor once parodied our style like this:

Every man shall wear:  
(a) Coat  
(b) Vest  
(c) Trousers  
Penalty: £100.

In the Customs and Excise Bills, under Kingston's influence, I think we carried things a bit too far. Like many innovators, he was apt to over-strain his theory. Not only was every sentence clear and direct, but every sentence was a separate section. There were Parts and Divisions, but he disdained the grouping of related sections into sub-sections, with some loss of organic unity. Perfect clearness requires not only a series of precise statements, but some indication of the relation between those statements, and I think that the staccato sections of these Acts, sometimes consisting of only half a dozen words, are wanting in this respect.

Drafting a statute offers no scope for literary graces—except the utilitarian one of perfect clarity—but it is a fine exercise in precise expression. I have to admit, however, that what seems crystal clear to the draftsman is not always clear to the High Court.

Of course we set our faces against the practice dear to earlier draftsmen of never mentioning a horse without adding mare, foal, colt, filly, or gelding—ransacking the dictionary for verbal equivalents till the page looked like an extract from *Roget's Thesaurus*.

I have to admit, too, that later, when legislation grew more complex, we were not always able to keep to this simple pattern. When war expenditure compelled the Commonwealth to resort to direct taxation, our first Income Tax Assessment Act was a thing of beauty and simplicity that would not have shamed Wordsworth or T. S. Eliot. But a graduated income tax tempts the crafty taxpayer to all sorts of devices to reduce his assessment; and just as in the Navy there was never-ending competition between guns and targets—armour being strengthened to stop missiles and missiles being weighted and hardened and speeded to pierce armour—so the battle of wits between taxpayer and taxation office led to all sorts of barbed-wire entanglements to keep the wily taxpayers from slipping through, till the Act became the literary monstrosity it is today.

## Exhibit 2—Method statement

[Tax Law Improvement Act 1997]

### 42-65 How to work out your cost

*Method statement*

- Step 1.* Work out the *cost* of the \*plant using the following table. If more than one row applies, use the cost under the last applicable row.
- Step 2.* The table indicates provisions that may adjust the cost. Refer to them to see if an adjustment is necessary.
- Step 3.* If more than one provision adjusts the cost, apply them in the order they appear in the table to:
- (a) the cost; or
  - (b) the adjusted cost after applying the last applicable provision.
- Step 4.* The result is your *cost*.

# Exhibit 3—reader’s guides, objects provisions, summaries, outlines, and theme statements

[Corporations Act 2001]

## Part 1.5—Small business guide

This guide summarises the main rules in the Corporations Act (the *Corporations Act 2001*) that apply to proprietary companies limited by shares—the most common type of company used by small business. The guide gives a general overview of the Corporations Act as it applies to those companies and directs readers to the operative provisions in the Corporations Act.

The notes in square brackets at the end of paragraphs in the guide indicate the main provisions of the Corporations Act, the regulations made under the Corporations Act, and ASIC Practice Notes that are relevant to the information in the paragraphs.

Other Commonwealth, State and Territory laws also impose obligations on proprietary companies and their operators.

### 1 *What registration means*

#### *1.1 Separate legal entity that has its own powers*

As far as the law is concerned, a company has a separate legal existence that is distinct from that of its owners, managers, operators, employees and agents. A company has its own property, its own rights and its own obligations. A company’s money and other assets belong to the company and must be used for the company’s purposes.

A company has the powers of an individual, including the powers to:

- own and dispose of property and other assets
- enter into contracts

- sue and be sued.

Once a company is registered, its separate legal status, property, rights and liabilities continue until ASIC (Australian Securities and Investments Commission) deregisters the company.

[sections 119, 124—125, 601AA—601AD]

### *1.2 Limited liability of shareholders*

Shareholders of a company are not liable (in their capacity as shareholders) for the company's debts. As shareholders, their only obligation is to pay the company any amount unpaid on their shares if they are called upon to do so. However, particularly if a shareholder is also a director, this limitation may be affected by other laws and the commercial practices discussed in 1.3 and 1.4.

[section 516]

### *1.3 Director's liability for company's debts*

A director of a company may be liable for debts incurred by the company at a time when the company itself is unable to pay those debts as they fall due.

A director of a company may be liable to compensate the company for any losses the company suffers from a breach of certain of the director's duties to the company (see 5.3).

In addition to having liability for the company's debts or to pay compensation to the company, a director may also be subject to a civil penalty.

If a company holds property on trust, a director of the company may be liable in some circumstances for liabilities incurred by the company as trustee.

[sections 197, 344, 588G, 588J, 588M, 1317H]

### *1.4 Director's liability as guarantor/security over personal assets*

As a matter of commercial practice, a bank, trade creditor or anyone else providing finance or credit to a company may ask a director of the company:

- for a personal guarantee of the company's liabilities; and

- for some form of security over their house or personal assets to secure the performance by the company of its obligations.

The director of a company may, for example, be asked by a bank to give a mortgage over their house to secure the company's repayment of a loan. If the company does not repay the loan as agreed with the bank, the director may lose the house.

### *1.5 Continuous existence*

A company continues to exist even if 1 or more of its shareholders or directors sells their shares, dies or leaves the company. If a company has only 1 shareholder who is also the only director of the company and that person dies, their personal representative is able to ensure that the company continues to operate.

[sections 119, 224A]

### *1.6 Rules for the internal management of a company*

The Corporations Act contains a basic set of rules for the internal management of a company (appointments, meetings etc.).

Some of these rules are mandatory for all companies. There are a few special rules for single shareholder/single director companies.

Other internal management rules in the Corporations Act are replaceable rules. The replaceable rules do not apply to:

- a single shareholder/single director company; or
- a company that had a constitution before the introduction of the replaceable rules regime and has not repealed it.

A company does not need to have a separate constitution of its own; it can simply take advantage of the rules in the Corporations Act. The company will need a constitution only if it wants to displace, modify or add to the replaceable rules.

[sections 134—141, 224B]

## **Part 2A—Freezing employer contributions before a superannuation order is made**

### **23A Simplified outline of this Part**

The following is a simplified outline of this Part:

This Part lets the Minister freeze a superannuation scheme member's employer contributions and accrued interest, to prevent them from being dissipated (and thus being harder to recover if a superannuation order is made in respect of the member).

The Minister can do so by a direction to the member's superannuation authority if the member has been charged with, or convicted of, an offence that the Minister believes is a corruption offence.

While the direction is in force, a benefit attributable to the member's employer contributions or interest cannot be paid.

The direction ceases to be in force if:

- (a) the charge is disposed of without conviction of the member; or
- (b) the member is convicted but a superannuation order cannot be made against the member; or
- (c) the direction is not extended within 12 months.



## 4 Overview of Act

### *Recognition and protection of native title*

- (1) This Act recognises and protects native title. It provides that native title cannot be extinguished contrary to the Act.

### *Topics covered*

- (2) Essentially, this Act covers the following topics:
  - (a) acts affecting native title (see subsections (3) to (6));
  - (b) determining whether native title exists and compensation for acts affecting native title (see subsection (7)).

### *Kinds of acts affecting native title*

- (3) There are basically 2 kinds of acts affecting native title:
  - (a) past acts (mainly acts done before this Act's commencement on 1 January 1994 that were invalid because of native title); and
  - (b) future acts (mainly acts done after this Act's commencement that either validly affect native title or are invalid because of native title).

### *Consequences of past acts and future acts*

- (4) For past acts and future acts, this Act deals with the following matters:
  - (a) their validity;
  - (b) their effect on native title;
  - (c) compensation for the acts.

### *Intermediate period acts*

- (5) However, for certain acts (called intermediate period acts) done mainly before the judgment of the High Court in *Wik Peoples v Queensland* (1996) 187 CLR 1, that would be invalid because they fail to pass any of the future act tests in Division 3 of Part 2, or for any other reason because of native title, this Act provides for similar consequences to past acts.

*Confirmation of extinguishment of native title*

- (6) This Act also confirms that many acts done before the High Court's judgment, that were either valid, or have been validated under the past act or intermediate period act provisions, will have extinguished native title. If the acts are previous exclusive possession acts (see section 23B), the extinguishment is complete; if the acts are previous non-exclusive possession acts (see section 23F), the extinguishment is to the extent of any inconsistency.

*Role of Federal Court and National Native Title Tribunal*

- (7) This Act also:
- (a) provides for the Federal Court to make determinations of native title and compensation; and
  - (b) establishes a National Native Title Tribunal with power to:
    - (i) make determinations about whether certain future acts can be done and whether certain agreements concerning native title are to be covered by the Act; and
    - (ii) provide assistance or undertake mediation in other matters relating to native title; and
  - (c) deals with other matters such as the keeping of registers and the role of representative Aboriginal/Torres Strait Islander bodies.

[Telecommunications Act 1997, section 3]

### **3 Objects**

- (1) The main object of this Act, when read together with Parts XIB and XIC of the *Trade Practices Act 1974*, is to provide a regulatory framework that promotes:
  - (a) the long-term interests of end-users of carriage services or of services provided by means of carriage services; and
  - (b) the efficiency and international competitiveness of the Australian telecommunications industry .

[Retirement Savings Accounts Act 1997, section 22]

### **22 Object of Part**

- (1) The object of this Part is to provide for constitutional corporations that can be relied on to conduct RSAs in accordance with this Act and the regulations to be approved as RSA institutions for the purposes of this Act and to provide for the variation, suspension and revocation of those approvals.
- (2) The significance of the approval of RSA institutions is that only RSA institutions can offer RSAs.

Note: In certain circumstances, an entity may cease to be approved as an RSA institution. Many provisions of this Act may continue to apply to that entity.

**60B Object of Part and principles underlying it**

- (1) The object of this Part is to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that, except when it is or would be contrary to a child's best interests:
  - (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
  - (b) children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development; and
  - (c) parents share duties and responsibilities concerning the care, welfare and development of their children; and
  - (d) parents should agree about the future parenting of their children.

**42-180 What this Subdivision is about**

This Subdivision explains how to calculate your balancing adjustment when a balancing adjustment event occurs.

The calculation may result in:

- one or more amounts being included in your assessable income; or
- you being able to deduct one or more amounts; or
- no further action being required.

## Exhibit 4—Notes

[Migration Act 1958]

### **501E Refusal or cancellation of visa—prohibition on applying for other visas**

- (1) A person is not allowed to make an application for a visa at a particular time (the application time) that occurs during a period throughout which the person is in the migration zone if:
  - (a) at an earlier time during that period, the Minister made a decision under section 501, 501A or 501B to refuse to grant a visa to the person or to cancel a visa that has been granted to the person; and
  - (b) the decision was neither set aside nor revoked before the application time.
- (2) Subsection (1) does not prevent a person, at the application time, from making an application for:
  - (a) a protection visa; or
  - (b) a visa specified in the regulations for the purposes of this subsection.

Note: The person may however be prevented from applying for a protection visa because of section 48A.

## Exhibit 5—Examples

[Aged Care Act 1997, section 57-20]

- (6) For the purposes of this section, if the care recipient is provided with care for 2 months or less, the care recipient is taken, for the purposes of working out retention amounts payable, to have received that care during:
- (a) the whole of the month in which the care recipient \*entered the residential care service; and
  - (b) the 2 following months;
- unless the User Rights Principles specify that care is taken to have been provided for a shorter period.

Example: A care recipient who \*entered a residential care service on 20 January and left on 3 March would be taken to have received care for the whole of January, February and March. Therefore, retention amounts could be deducted for each of these months.

[Australian Radiation Protection and Nuclear Safety Act 1998]

### 9 Operation of Act

- (1) It is the intention of the Parliament that this Act is not to exclude the operation of the *Nuclear Non-Proliferation (Safeguards) Act 1987*, to the extent that the *Nuclear Non-Proliferation (Safeguards) Act 1987* is capable of operating concurrently with this Act.

Example: A controlled person may be required by this Act to hold a licence, and by the *Nuclear Non-Proliferation (Safeguards) Act 1987* to hold a permit, in respect of the same thing. The controlled person must satisfy the requirements of both Acts in so far as they are capable of being satisfied concurrently.

[Child Support Assessment Act 1989, section 7A]

*Examples*

- (4) Subsections (5), (6), (7) and (8) merely give a series of examples of the operation of the rules in subsections (1), (2) and (3). The examples involve Mary and Peter. Mary cares for their child and, on 8 June 2000, makes an application under Part 4 and receives a child support assessment for Peter to pay her child support for the child.

*Example—initial child support period resulting from application under Part 4*

- (5) On 20 October 2000, the Registrar makes a new administrative assessment based on an assessment under the income tax law of Peter's taxable income for the 1999-2000 year of income (as required by section 34A). The first child support period starts on 8 June 2000 and ends at the end of 31 October 2000, and the second starts on 1 November 2000.

*Example—end of child support period if new taxable income not available within 15 months*

- (6) If no assessment of the taxable income of Mary or Peter for the 1999-2000 or the 2000-2001 year of income had been made under the income tax law before the end of 7 September 2001, the first child support period would start on 8 June 2000 and end at the end of 7 September 2001 (15 months after it started).

*Example—child support agreement ends existing child support period and starts a new one*

- (7) If Mary and Peter make a child support agreement to influence the annual rate of child support on and after 15 September 2000:
- (a) the child support period that started on 8 June 2000 ends at the end of 14 September 2000; and
  - (b) a new child support period starts on 15 September 2000.

*Example—child support period for child support agreement setting child support rate lasts 15 months*

- (8) If the child support agreement set the rate of child support payable for the next 2 years (so section 34A did not require the Registrar to

make an administrative assessment on 20 October 2000 as described in subsection (5)), the child support period that started on 15 September 2000 would end 15 months later at the end of 14 December 2001 (unless Mary and Peter made another child support agreement to affect the rate of child support payable for a day before 15 December 2001).

[A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999]

## 6 What is the family surcharge threshold?

- (1) The *family surcharge threshold* for a person for a year of income is \$100,000.
- (2) However, if the person has 2 or more dependants who are children, the *family surcharge threshold* for the person for the year of income is the amount worked out using the formula:

$$\$100,000 + \left( \$1,500 \times \left( \begin{array}{c} \text{Number of dependants} \\ \text{who are children} \end{array} - 1 \right) \right)$$

Example: If a person has 3 dependants who are children, the family surcharge threshold is:

$$\$100,000 + \$1,500 \times (3 - 1) = \$103,000$$



# Exhibit 6—Highlighting of defined terms

[Income Tax Assessment Act 1997]

## Subdivision 34-B—Deduction for your non-compulsory uniform

### Table of sections

34-10	What you can deduct
34-15	What is a <i>non-compulsory uniform</i> ?
34-20	What are <i>occupation specific clothing</i> and <i>protective clothing</i> ?

### 34-10 What you can deduct

- (1) If you are an employee, you can deduct expenditure you incur in respect of your \*non-compulsory uniform if:
  - (a) you can deduct the expenditure under another provision of this Act; and
  - (b) the \*design of the uniform is registered under this Division when you incur the expenditure.

Note 1: This Division also applies to PAYE earners and other individuals who are not employees: see Subdivision 34-A.

Note 2: Employers apply to register designs of uniforms: see Subdivision 34-C.

- (2) You *cannot* deduct the expenditure under this Act if the \*design is *not* registered at the time you incur the expenditure.
- (3) However, this Division does not stop you deducting expenditure you incur in respect of your \*occupation specific clothing or \*protective clothing.

### 34-15 What is a *non-compulsory uniform*?

*What is a uniform?*

- (1) A *uniform* is one or more items of clothing (including accessories) which, when considered as a set, distinctively identify you as a person associated (directly or indirectly) with:
  - (a) your employer; or
  - (b) a group consisting of your employer and one or more of your employer's \*associates.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 95-1.

## Exhibit 7—Forensic procedures table

[Crimes Act 1914, section 23XM (original version, edited as described in text)]

<b>Who may carry out forensic procedures</b>			
Forensic procedure	Persons who may carry out forensic procedure	Is suspect entitled to request presence of medical practitioner or dentist of suspect's choice?	
1 external examination of the genital or anal area, the buttocks or, in the case of a female, the breasts	medical practitioner nurse appropriately qualified person	yes (medical practitioner)	
2 the taking of a sample of blood	medical practitioner nurse appropriately qualified person	yes (medical practitioner)	
3 the taking of a sample of saliva, or a sample by buccal swab	medical practitioner dentist dental technician nurse appropriately qualified person	yes (dentist or medical practitioner)	
4 the taking of a sample of pubic hair	medical practitioner nurse appropriately qualified person	yes (medical practitioner)	
7 the taking of a dental impression	medical practitioner dentist dental technician	yes (dentist or medical practitioner)	
9 external examination of a part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts, that requires touching of the body or removal of clothing	medical practitioner nurse appropriately qualified person	no	
10 the taking of a sample of hair other than pubic hair	medical practitioner nurse constable appropriately qualified person	no	
11 the taking of a sample from a nail or from under a nail	medical practitioner nurse constable appropriately qualified person	no	
14 the taking of a hand print, finger print, foot print or toe print	appropriately qualified person	no	

## **Exhibit 8—Forensic procedures text**

[Alternative version of Exhibit 7, prepared for purposes of this paper]

### **External examination of genital or anal area, buttocks or breasts**

- (1) A forensic procedure involving an external examination of the genital or anal area, the buttocks or, in the case of a female, the breasts, may be carried out by a medical practitioner, a nurse, or an appropriately qualified person.
- (2) The suspect is entitled, on request, to have a medical practitioner of the suspect's choice present while the forensic procedure is carried out.

### **Blood sample**

- (1) A forensic procedure involving the taking of a sample of blood may be carried out by a medical practitioner, a nurse, or an appropriately qualified person.
- (2) The suspect is entitled, on request, to have a medical practitioner of the suspect's choice present while the forensic procedure is carried out.

### **Saliva sample or buccal swab**

- (1) A forensic procedure involving the taking of a sample of saliva, or a sample by buccal swab, may be carried out by a medical practitioner, a dentist, a dental technician, a nurse, or an appropriately qualified person.
- (2) The suspect is entitled, on request, to have a medical practitioner or dentist of the suspect's choice present while the forensic procedure is carried out.

### **Pubic hair sample**

- (1) A forensic procedure involving the taking of a sample of pubic hair may be carried out by a medical practitioner, a nurse, or an appropriately qualified person.
- (2) The suspect is entitled, on request, to have a medical practitioner of the suspect's choice present while the forensic procedure is carried out.

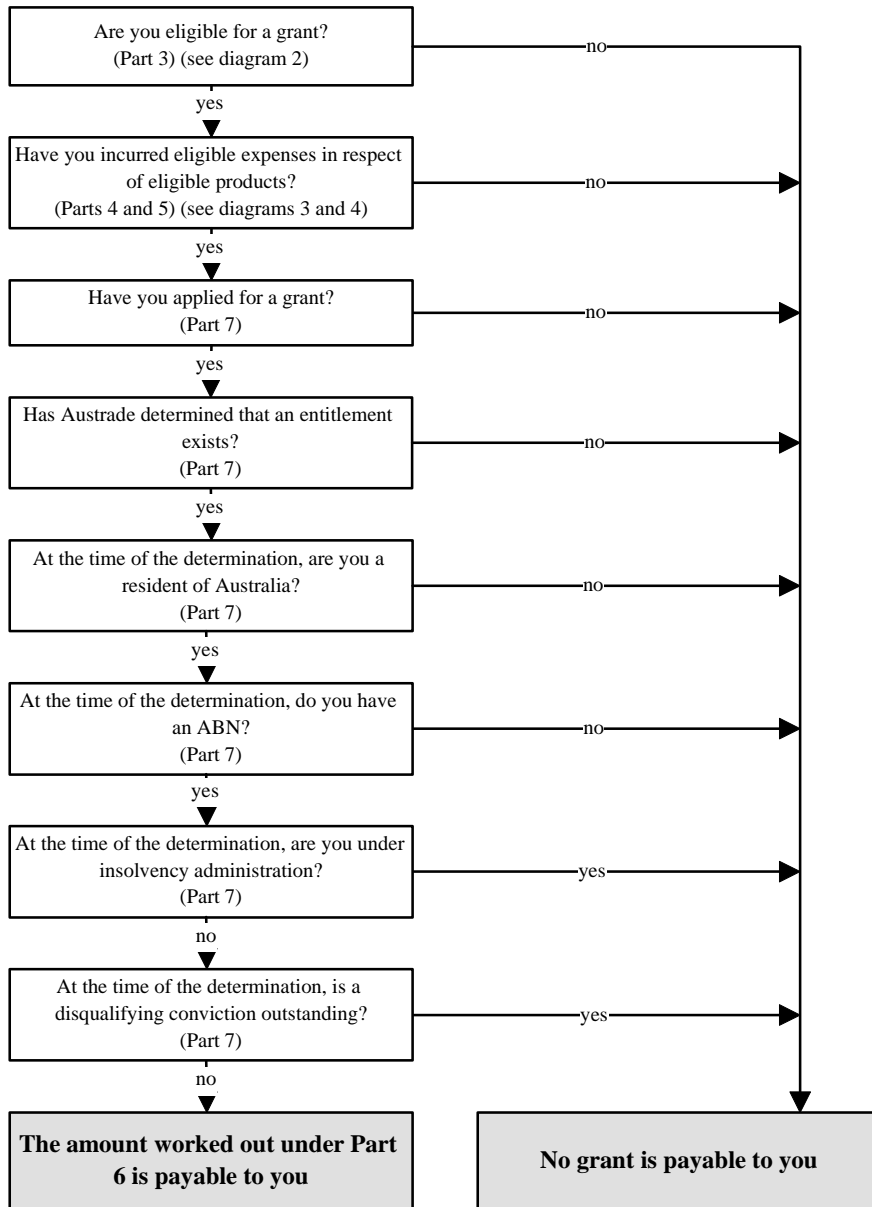
### **Dental impression**

- (1) A forensic procedure involving the taking of a dental impression may be carried out by a medical practitioner, a dentist or a dental technician,.
- (2) The suspect is entitled, on request, to have a medical practitioner or dentist of the suspect's choice present while the forensic procedure is carried out.

# Exhibit 9—EMDG decision diagram

[Export Market Development Grants Act 1997, Reader's guide]

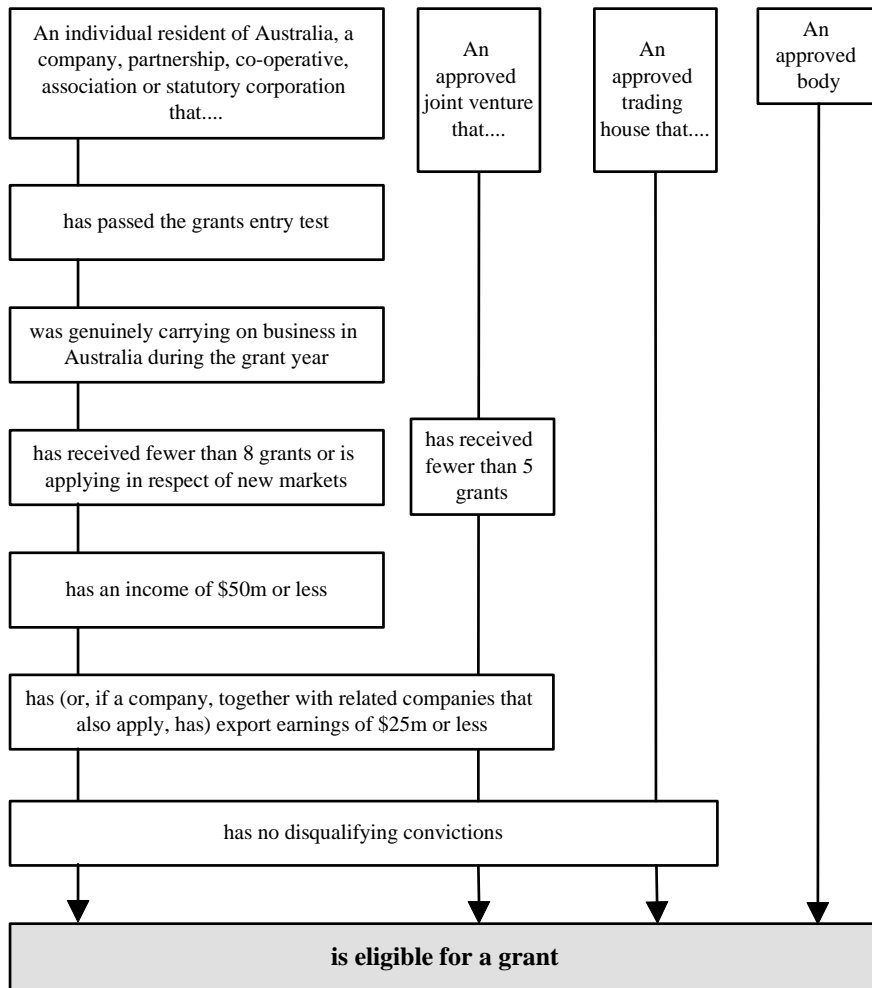
**Diagram 1—Is an amount of grant payable to you? (Overview of Act)**



# Exhibit 10—EMDG eligibility diagram

[Export Market Development Grants Act 1997, Reader's guide]

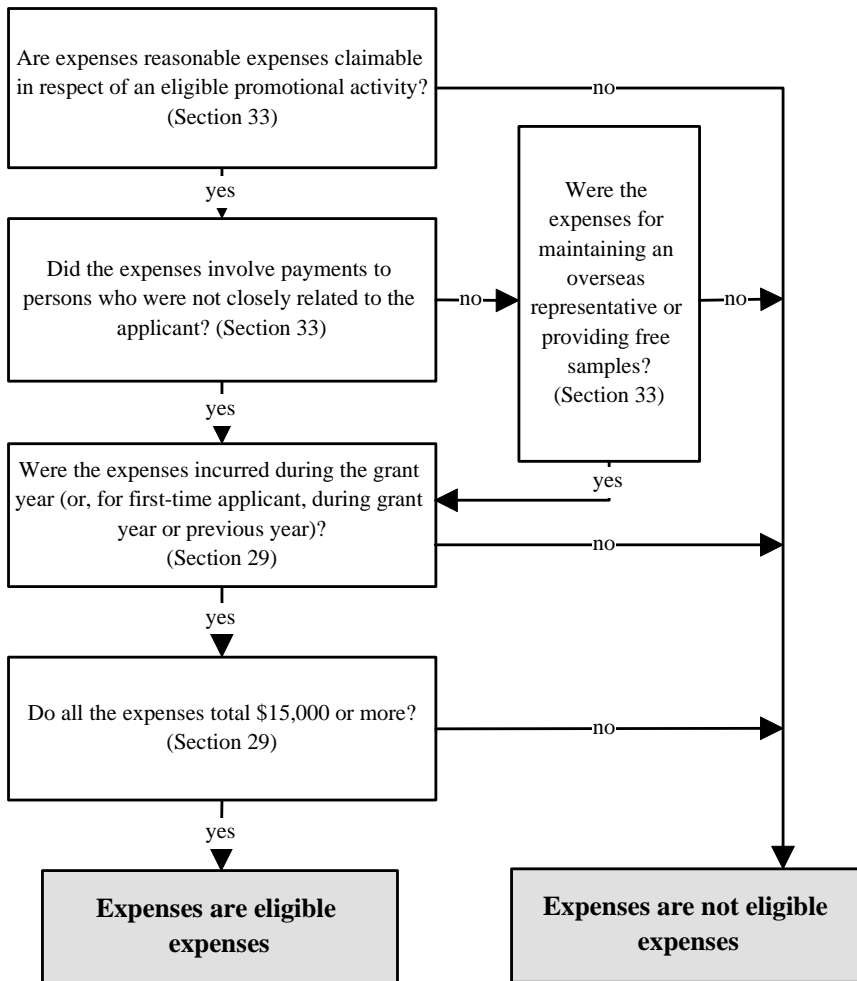
## Diagram 2—Who is eligible for a grant? (Overview of Part 3)



# Exhibit 11—EMDG eligible expenses diagram

[Export Market Development Grants Act 1997, Reader's guide]

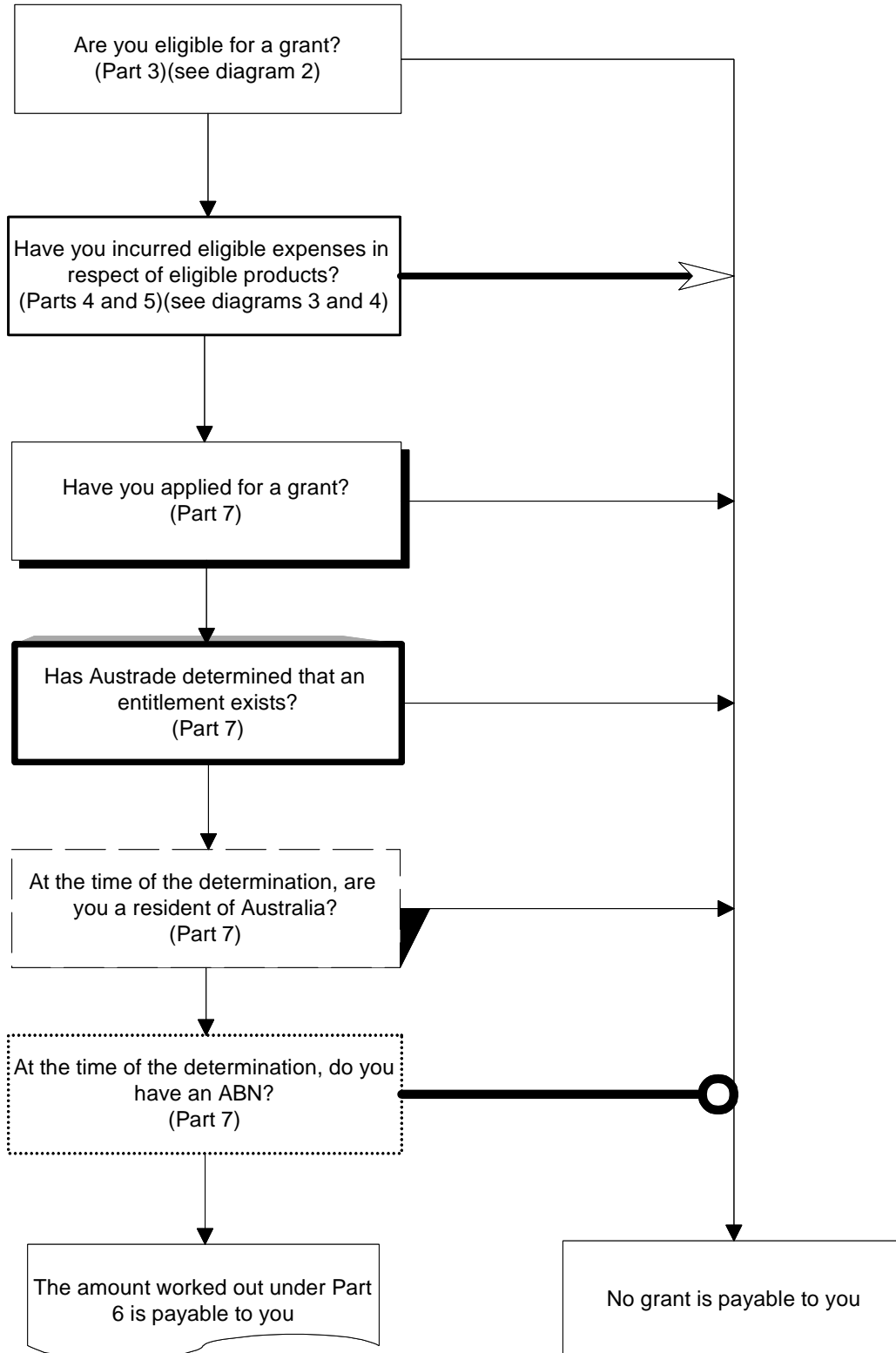
**Diagram 4—What are eligible expenses of an applicant? (Overview of Part 5)**



# Exhibit 12—Irrelevant complexity

[Alternative version of Exhibit 9, prepared for purposes of this paper]

## Diagram 1 - Is an amount of grant payable to you? (Overview of Act)



# Exhibit 13—EMDG text (disqualified individuals)

[Export Market Development Grants Act 1997]

## ***Division 2—Disqualified individual not to help in preparing application***

### ***74 Application of Division***

- (1) This Division applies to an application for a grant made to Austrade if:
  - (a) it has been prepared for the applicant by an export market development grants consultant; and
  - (b) an individual helped, in a prescribed capacity, to prepare the application.

Note: For *export market development grants consultant* see section 107. For *prescribed capacity* see subsection (2).
- (2) For the purposes of this Part, an individual helps to prepare an application in a *prescribed capacity* if:
  - (a) either:
    - (i) any work done by the individual in preparing the application involves forming an opinion (whether formal or informal) about the operation of the law on a matter dealt with by the application; or
    - (ii) the individual manages or supervises (directly or indirectly) work mentioned in subparagraph (i); and
  - (b) the work, management or supervision (as the case may be) is performed by or on behalf of an export market development grants consultant.

### ***75 Application taken not to have been made if individual helps, in a prescribed capacity, to prepare it***

If the individual who helped to prepare the application:

- (a) is, at the time when the application is made, disqualified from preparing applications; or
- (b) becomes disqualified from preparing applications at any time during the period beginning when the application is made and ending immediately before Austrade determines whether the applicant is entitled to a grant;

the application is taken for the purposes of this Act (other than this Division) not to have been made.

### ***76 Austrade must notify applicant that application taken not to have been made***

If the application is taken (under section 75) not to have been made, Austrade must, as soon as practicable after becoming aware of that fact, give to the applicant a written notice:

- (a) stating that the application is taken not to have been made; and
- (b) setting out the effect of section 77.



# Exhibit 14—EMDG table (disqualified individuals)

[Alternative version of Exhibit 13, prepared for purposes of this paper]

<b>Disqualified individual not to help in preparing application</b>		
<b>Item</b>	<b>Topic</b>	<b>Operative provisions</b>
1	Application of Division	<p>(1) This Division applies to an application for a grant made to Austrade if:</p> <p>(a) it has been prepared for the applicant by an export market development grants consultant; and</p> <p>(b) an individual helped, in a prescribed capacity, to prepare the application.</p> <p>Note: For <i>export market development grants consultant</i> see section 107. For <i>prescribed capacity</i> see subsection (2).</p> <p>(2) For the purposes of this Part, an individual helps to prepare an application in a <i>prescribed capacity</i> if:</p> <p>(a) either:</p> <p>(i) any work done by the individual in preparing the application involves forming an opinion (whether formal or informal) about the operation of the law on a matter dealt with by the application; or</p> <p>(ii) the individual manages or supervises (directly or indirectly) work mentioned in subparagraph (i); and</p> <p>(b) the work, management or supervision (as the case may be) is performed by or on behalf of an export market development grants consultant.</p>
2	Application taken not to have been made if individual helps, in a prescribed capacity, to prepare it	<p>If the individual who helped to prepare the application:</p> <p>(a) is, at the time when the application is made, disqualified from preparing applications; or</p> <p>(b) becomes disqualified from preparing applications at any time during the period beginning when the application is made and ending immediately before Austrade determines whether the applicant is entitled to a grant;</p> <p>the application is taken for the purposes of this Act (other than this Division) not to have been made.</p>
3	Austrade must notify applicant that application taken not to have been made	<p>If the application is taken (under section 75) not to have been made, Austrade must, as soon as practicable after becoming aware of that fact, give to the applicant a written notice:</p> <p>(a) stating that the application is taken not to have been made; and</p> <p>(b) setting out the effect of section 77.</p>

# Exhibit 15—Forensic procedures table introduction

[Crimes Act 1914]

## **23XM Persons who may carry out forensic procedures**

- (1) The table following subsection (4) shows, for each forensic procedure, the persons who may carry out the procedure under this Part. A person not specified in the second column of the table is not authorised to carry out a forensic procedure under this Part except as mentioned in section 23XO.
- (2) The third column of the table following subsection (4) shows, for each forensic procedure, whether the suspect is entitled to request that a medical practitioner or dentist of the suspect's choice is present while the forensic procedure is carried out.

Note: Section 23XP makes detailed provision for the presence of a medical practitioner or dentist of the suspect's choice while a forensic procedure is carried out.

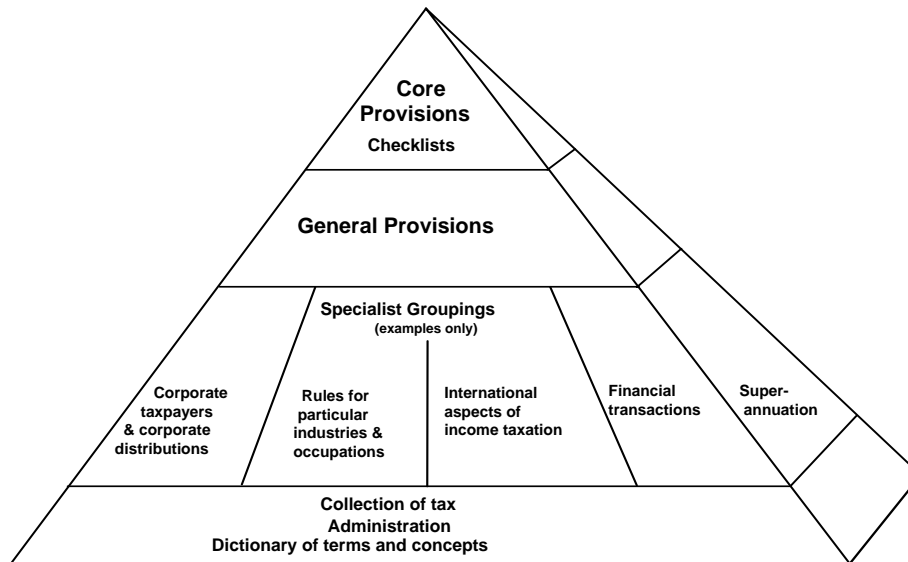
# Exhibit 16—Corporations Act notification requirements

[Corporations Act 2001, Part 1.5]

<b>Notification requirements</b>				
	<b>If...</b>	<b>the company must notify ASIC of the change...</b>	<b>using Form No...</b>	<b>see section...</b>
1.	a company issues shares	within 1 month after the issue	207	254X
2.	a company changes the location of a register	within 7 days after the change	909	172, 1302
3.	a company changes the address of its registered office or principal place of business	within 14 days after the change	203	142, 146
4.	a company changes its directors or company secretary	within 14 days after the change	304	205B
5.	there is a change in the name or address of the company's directors or secretary	within 14 days after the change	304	205B
6.	a company creates certain kinds of charges	within 45 days after the charge is created	309	263

## Exhibit 17—Income tax pyramid diagram

[Income Tax Assessment Act 1997, section 2-5]



## Exhibit 18—Income tax pyramid introduction

[Income Tax Assessment Act 1997]

### 2-5 The pyramid

This Act is arranged in a way that reflects the principle of moving from the general case to the particular.

In this respect, the conceptual structure of the Act is something like a pyramid. The pyramid shape illustrates the way the income tax law is organised, moving down from the central or core provisions at the top of the pyramid, to general rules of wide application and then to the more specialised topics.