



# **Export Market Development Grants Act 1997**

**Act No. 57 of 1997 as amended**

This compilation was prepared on 7 July 2010  
taking into account amendments up to Act No. 86 of 2010

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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## Reader's guide

This guide aims to give you a general idea of the purpose of this Act and some information about its structure. It also explains briefly how the operation and interpretation of this Act is affected by other Acts.

## Purpose of this Act

This Act provides for the grant of financial assistance by the CEO of Austrade to small and medium Australian enterprises to provide incentives for them to develop export markets. The underlying principle is that incentives are only provided to export businesses that can return significant net benefit to Australia because:

they are Australian businesses;

they are seeking to export products that are substantially Australian; and

they are being encouraged to undertake additional promotional activities.

This Act is a rewrite of the *Export Market Development Grants Act 1974* which is repealed by the *Export Market Development Grants (Repeal and Consequential Provisions) Act 1997*.

It gives effect to a number of policy changes designed to direct financial assistance most effectively and remove administrative complexity, while ensuring accountability.

An attempt has also been made in the drafting of the Act to use simple language and to organise the material in such a way as to make it easier for readers to understand the law.

## Understanding this Act

This Act is divided into 9 Parts. To get a proper understanding of the assistance scheme that this Act provides, you need to refer to Parts 2 to 7 in particular. The contents of those Parts are summarised below.

- 
- **Entitlement to grant (Part 2)**
  - **Persons eligible for a grant (Part 3)**
  - **Eligible products (Part 4)**
  - **Eligible expenses (Part 5)**
  - **Amount of grant (Part 6)**
  - **Application for, and payment of, grant (Part 7)**

Part 1 contains formal provisions and the object of the Act. Part 8 deals with miscellaneous matters such as the approval procedure for bodies, trading houses and joint ventures, review rights and repayment of grant. Part 9 contains definitions and terms that are used throughout this Act. (A list of terms defined in Part 9 appears after the Table of Contents.)

The diagrams at the end of this guide illustrate the contents of this Act more fully. They are intended to be used as an illustration and do not have any other effect. If there is any inconsistency between anything contained in the diagrams and a provision of this Act, the provision prevails.

## **Related legislation**

The following Acts are directly relevant to the operation or interpretation of this Act.

*Export Market Development Grants (Repeal and Consequential Provisions) Act 1997*

The *Export Market Development Grants Act 1974* (the 1974 Act), which contained the legislation regulating the previous scheme, is repealed by that Act. Even though it is repealed, the Repeal and Consequential Provisions Act provides that the 1974 Act is to continue to apply in certain circumstances. It also saves some matters provided for under the 1974 Act to be applied for the purposes of this Act.

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*Acts Interpretation Act 1901*

That Act contains general rules about the meaning or effect of many terms and provisions that are commonly used in Commonwealth Acts. For example, it defines Australia, individual and document and provides that a power conferred on a person to make an instrument includes the power to revoke or vary the instrument.

*Administrative Appeals Tribunal Act 1975*

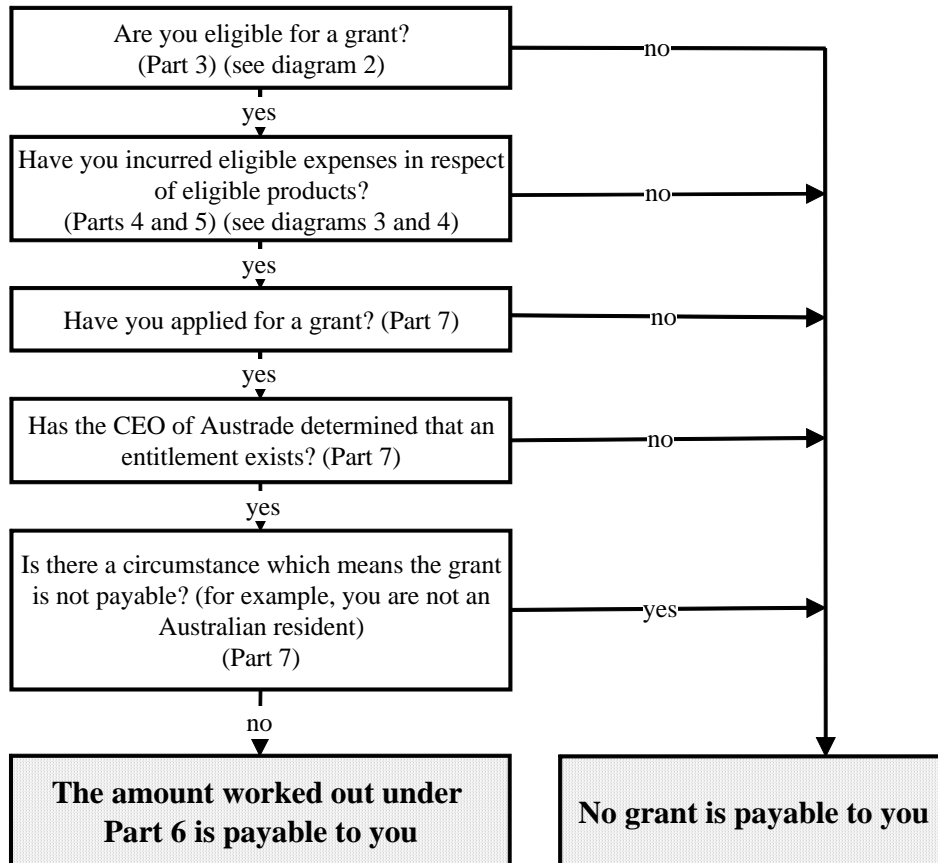
That Act empowers the Administrative Appeals Tribunal to review, on its merits, any decision of the CEO of Austrade under this Act that has been referred to the Tribunal under section 99 by a person whose interests have been affected by the decision.

*Administrative Decisions (Judicial Review) Act 1977*

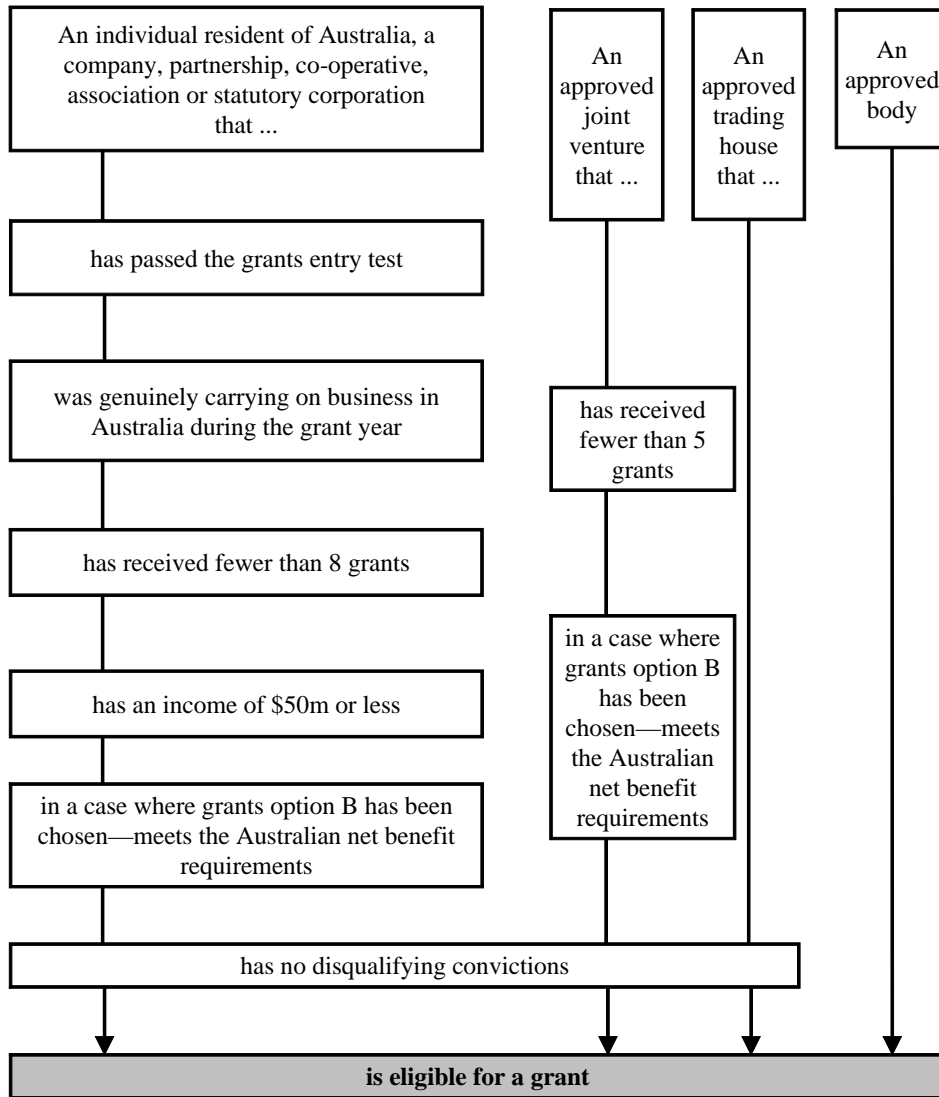
Under that Act, the Federal Court of Australia may review, on certain questions of law only, any decision of the CEO of Austrade under this Act that is referred to it by a person aggrieved by the decision.

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



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



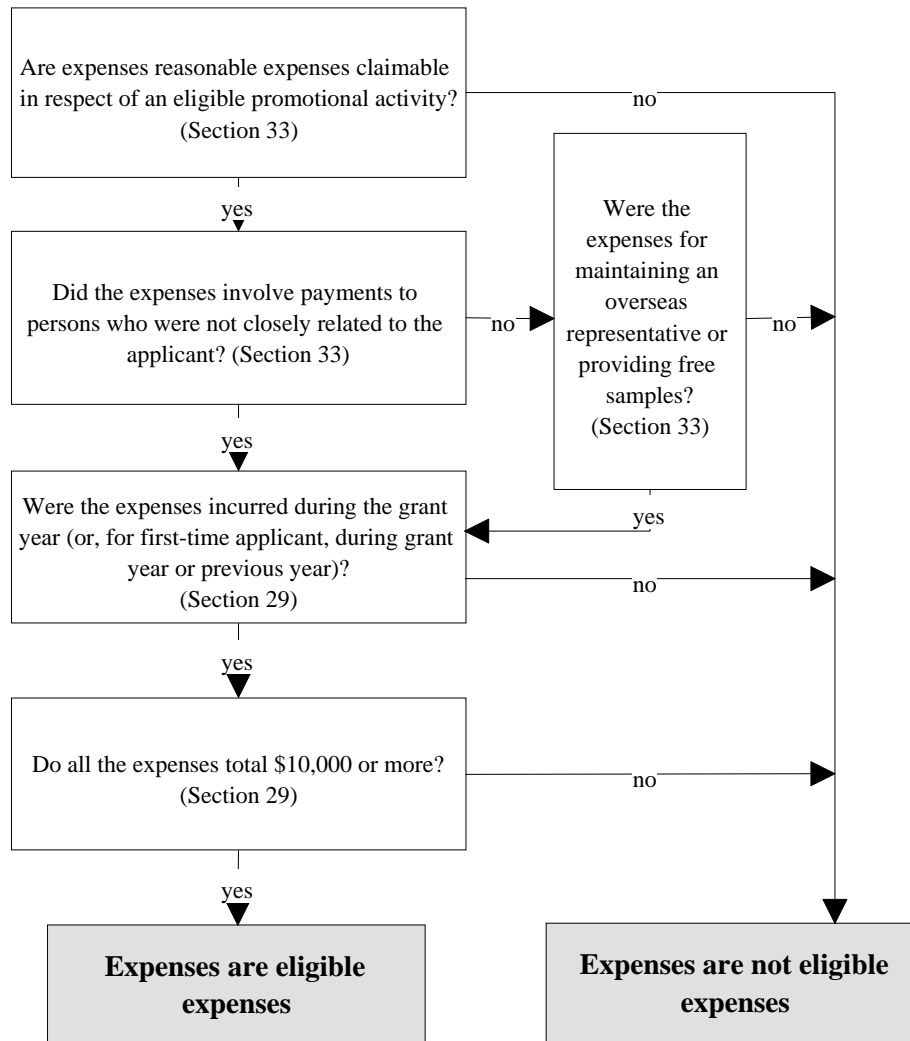
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**Diagram 3—What are eligible products? (Overview of Part 4)**

<b>What are eligible products?</b>		
<b>Item</b>	<b>These products...</b>	<b>if they meet these conditions...</b>
1	Goods	(a) goods are made in Australia; or (b) the CEO of Austrade is satisfied that Australia will derive a significant net benefit from sale of the goods outside Australia
2	Non-tourism service supplied in or outside Australia to a non-resident	the CEO of Austrade is satisfied that Australia will derive a significant net benefit from supply of the service
4	Event held in Australia marketed to persons outside Australia	the CEO of Austrade is satisfied that Australia will derive a significant net benefit from holding of the event
5	Tourism service supplied in Australia to a non-resident	the CEO of Austrade is satisfied that Australia will derive a significant net benefit from supply of the service
6	Intellectual property rights relating to a trade mark	trade mark is first used in Australia or is of increased value or significance because of use in Australia
7	Other intellectual property rights	rights result to a substantial extent from research or work done in Australia
8	Know-how	know-how results to a substantial extent from research or work done in Australia

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





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## List of terms defined in Part 9

approved activity, project or purpose  
approved body  
approved joint venture  
approved promotional purpose  
approved trading house  
associate  
association  
Austrade  
Australian law  
Australian net benefit requirements  
balance distribution date  
CEO of Austrade  
child  
company  
conviction  
co-operative  
de facto partner  
disposal  
disqualifying conviction  
eligible expenses  
eligible goods  
eligible intellectual property  
eligible know-how  
eligible non-tourism service  
eligible products  
eligible promotional activity  
eligible services  
eligible tourism service  
export  
export market development grants consultant  
grant  
grantee  
grants entry test

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grant year  
income  
initial payment ceiling amount  
intellectual property  
nominated contact member  
non-tourism service  
parent  
partnership  
payout factor  
person  
provisional grant amount  
related company  
related company group  
relative  
repealed Act  
resident of Australia  
sale  
spouse  
supply  
Territory  
tourism service  
under insolvency administration



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# **An Act relating to the grant of financial assistance to provide incentives for the development of export markets**

## **Part 1—Preliminary**

### **1 Short title** [see Note 1]

This Act may be cited as the *Export Market Development Grants Act 1997*.

### **2 Commencement**

This Act commences on 1 July 1997.

### **3 Object of Act**

The object of this Act is to bring benefits to Australia by encouraging the creation, development and expansion of foreign markets for Australian goods, services, intellectual property and know-how. It does so by providing for an assistance scheme under which small and medium Australian exporters committed to and capable of seeking out and developing export business are repaid part of their expenses incurred in promoting those products.

## Part 2—Entitlement to grant

### 4 Entitlement to grant

Subject to this Act, a person that:

- (a) is eligible under Part 3 for a grant in respect of a grant year;  
and
  - (b) has incurred eligible expenses in that grant year in relation to eligible products; and
  - (c) has applied for a grant in accordance with Part 7;
- is entitled to a grant in respect of that grant year in the amount worked out under Part 6.

Note: For *eligible expenses*, *grant year*, *eligible products* and *grant* see section 107.

## **Part 3—Persons eligible for a grant**

### **Division 1—General**

#### **5 Object of Part**

- (1) This Part defines who is eligible for a grant.
- (2) The underlying principle is that only small or medium Australian businesses that:
  - (a) are developing export markets for eligible products; and
  - (b) have a prospect of success in their export enterprise;should be eligible for a grant.

Note: For *grant* and *eligible products* see section 107.

#### **6 Who is eligible for a grant?**

- (1) Each of the following:
  - (a) an individual who is a resident of Australia;
  - (b) a body incorporated under the *Corporations Act 2001*;
  - (c) an association or co-operative incorporated under an Australian law;
  - (d) a partnership regulated by an Australian law;
  - (e) a joint venture approved by the CEO of Austrade under section 89;
  - (g) a body corporate established for a public purpose by or under an Australian law;is eligible for a grant in respect of a grant year if it satisfies the conditions applicable to it under section 7.
- (2) A body approved by the CEO of Austrade under section 89 is eligible for a grant in respect of a grant year.

Note: For *Australian law*, *CEO of Austrade*, *grant* and *grant year* see section 107. For *resident of Australia* see section 114.

## **7 General rules for eligibility**

### *Person other than approved joint venture or trustee*

- (1) A person referred to in subsection 6(1) (other than an approved joint venture or a person acting in the capacity of trustee of a trust estate) is eligible for a grant in respect of a grant year if the following conditions are satisfied:
- (a) the person was, in the opinion of the CEO of Austrade, genuinely carrying on business in Australia during the grant year;
  - (b) in the case of an individual, he or she was a resident of Australia during the time in the grant year when he or she was, in the CEO's opinion, carrying on business in Australia;
  - (c) the person is not a grantee in respect of 7 or more previous grant years;
  - (d) the person's income for the grant year is not more than \$50,000,000;
  - (g) there are no disqualifying convictions outstanding against the person under section 17 when the person applies for the grant;
  - (h) if Division 5 applies to the person—the CEO has decided under section 20 that the person met the grants entry requirements;
  - (i) if:
    - (i) the person is a grantee in respect of 2 or more previous grant years; and
    - (ii) the person's application for a grant in respect of the grant year sets out a statement that the person chooses grants option B in relation to the grant year;the CEO has decided under section 9 that the person meets the Australian net benefit requirements in relation to the grant year.

Note: For *person, grant, grant year, CEO of Austrade, resident of Australia, grantee, income, related company, associate, Australian net benefit requirements* and *grants entry requirements* see section 107.

*Approved joint venture*

- (2) An approved joint venture is eligible for a grant in respect of a grant year if it satisfies the following conditions:
- (a) it is not a grantee in respect of 5 or more previous grant years;
  - (d) there are no disqualifying convictions outstanding against the joint venture under section 17 when the joint venture applies for the grant;
  - (e) if:
    - (i) the joint venture is a grantee in respect of 2 or more previous grant years; and
    - (ii) the joint venture's application for a grant in respect of the grant year sets out a statement that the joint venture chooses grants option B in relation to the grant year; the CEO has decided under section 9 that the joint venture meets the Australian net benefit requirements in relation to the grant year.

Note: For *approved joint venture*, *Australian net benefit requirements*, *grant*, *grant year* and *grantee* see section 107.

*Trustees*

- (4) A person acting as trustee of a trust estate is eligible for a grant in respect of a grant year if the following conditions are satisfied:
- (aa) the person was, in the opinion of the CEO of Austrade, genuinely carrying on business in Australia during the grant year as trustee of the trust estate;
  - (a) the person provides to the CEO, on request, the following information:
    - (i) a declaration of beneficial and ultimate control of the trust estate, including by trustees; and
    - (ii) a declaration of the identities of the beneficiaries of the trust estate, including in the case of individuals, their countries of residence and, in the case of beneficiaries which are not individuals, their countries of incorporation or registration, as the case may be; and
    - (iii) details of any relationships with other entities; and
    - (iv) the percentage distribution of income within the trust; and

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- (v) any changes during the grant year in relation to information provided under subparagraphs (i), (ii), (iii) or (iv);
- (b) the person is not a grantee in respect of 7 or more previous grant years;
- (c) the income of the person from the trust business during the grant year is not more than \$50,000,000;
- (g) there are no disqualifying convictions outstanding against either the person or any beneficiary of the trust estate under section 17 when the person applies for the grant;
- (h) if Division 5 applies to the person (as trustee of the trust estate)—the CEO has decided under section 20 that the person (in that capacity) met the grants entry requirements;
- (i) if:
  - (i) the person is a grantee in respect of 2 or more previous grant years; and
  - (ii) the application made by the person (as trustee of the trust estate) for a grant in respect of the grant year sets out a statement that the person chooses (in that capacity) grants option B in relation to the grant year;the CEO has decided under section 9 that the person (in that capacity) meets the Australian net benefit requirements in relation to the grant year.

Note: For *person*, *grant year*, *CEO of Austrade*, *grantee*, *income*, *associate*, *Australian net benefit requirements* and *grants entry requirements* see section 107.

## **8 Grantees in respect of grant years**

- (1) In determining for the purposes of this Act whether a person is a grantee in respect of a grant year, any of the following grants paid to the person is to be disregarded:
  - (a) a grant of \$3,500 or less in respect of a claim period before the grant year that started on 20 May 1985;
  - (b) in the case of a person that was, for the purposes of the repealed Act, a body specified in Schedule 7 to the Export Market Development Grants Regulations made under that Act—any grant to that person in respect of a claim period before the grant year that started on 20 May 1985;
  - (c) a grant:

- (i) in respect of a claim period before the grant year that started on 1 July 1990; and
- (ii) that was solely in respect of eligible expenditure (within the meaning of the repealed Act) for eligible tourism services (within the meaning of that Act);
- (d) in the case of a person that has applied for a grant in the capacity of trustee of a trust estate—any grant paid to the person otherwise than in that capacity;
- (e) in the case of a person that has applied for a grant in the person's own right—any grant paid to the person in the person's capacity as trustee of a trust estate.

Note: For *grantee* and *repealed Act* see section 107.

- (3) In subsection (1):

*claim period* has the same meaning as in the repealed Act.

*grant* includes a grant under the repealed Act.

## **Division 2—Australian net benefit requirements**

### **9 The CEO of Austrade must decide whether person meets Australian net benefit requirements**

*Application made in applicant's own right*

- (1) If:
- (a) a person has applied for a grant in respect of a grant year; and
  - (b) the applicant is not an approved body; and
  - (c) the application is made in the applicant's own right; and
  - (d) the applicant is a grantee in respect of 2 or more previous grant years; and
  - (e) the application sets out a statement that the applicant chooses grants option B in relation to the grant year;

the CEO of Austrade must decide whether the applicant meets the Australian net benefit requirements in relation to the grant year.

Note: The Australian net benefit requirements are the requirements determined under section 10.

*Application made in applicant's capacity as trustee*

- (2) If:
- (a) a person has applied for a grant in respect of a grant year; and
  - (b) the applicant is not an approved body; and
  - (c) the application is made in the applicant's capacity as trustee of a trust estate; and
  - (d) the applicant is a grantee in respect of 2 or more previous grant years; and
  - (e) the application sets out a statement that the applicant chooses, in the applicant's capacity as trustee of the trust estate, grants option B in relation to the grant year;

the CEO of Austrade must decide whether the applicant, in that capacity, meets the Australian net benefit requirements in relation to the grant year.

Note: The Australian net benefit requirements are the requirements determined under section 10.

## **10 Australian net benefit requirements**

The Minister may, by legislative instrument, determine that, for the purposes of this Act, specified requirements are the *Australian net benefit requirements* for a grant year.

## **Division 4—Outstanding disqualifying convictions**

### **16 Disqualifying convictions**

- (1) For the purposes of this Act, a *disqualifying conviction* is:
- (a) in relation to an individual—a conviction of the individual for a relevant offence; or
  - (b) in relation to a body corporate—a conviction of the body corporate or of an associate of the body corporate for a relevant offence; or
  - (c) in relation to a partnership or an approved joint venture—a conviction of an associate of the partnership or of the joint venture for a relevant offence.

Note: For *associate* see section 107.

- (2) In this section:

*relevant offence* means:

- (a) an offence that under subsection 206B(1) of the *Corporations Act 2001* disqualifies a person from managing a corporation; or
- (c) an offence against section 39 of the repealed Act; or
- (d) an offence:
  - (i) against section 6 of the *Crimes Act 1914*; or
  - (ii) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or
  - (iii) against section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
  - (iv) against a provision of a law of a State or Territory that corresponds to any of the provisions referred to in subparagraphs (i) to (iii);that relates to an offence referred to in paragraph (a) or (c); or
- (e) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 or 137.2 of the *Criminal Code* that relates to an application for a grant.

Note: For *repealed Act* see section 107.

### **17 When is a disqualifying conviction outstanding?**

A disqualifying conviction in respect of a person remains ***outstanding*** against the person for the period starting on the day on which the conviction was recorded and ending:

- (a) if the conviction was for a term of imprisonment—5 years after the individual convicted was released from prison; or
- (b) in any other case—5 years after the day on which the conviction was recorded.

## **Division 5—Grants entry requirements**

### **18 Persons affected by Division**

- (1) Subject to subsections (2) and (3), this Division applies to a person (other than an approved body or approved joint venture) that applies for a grant in respect of a grant year unless:
  - (a) the person is a grantee in respect of any previous grant year; or
  - (b) the person's application for a grant in respect of the immediately preceding grant year is pending.

Note: For *person* and *grantee* see section 107.

- (2) If the person applies for a grant in the capacity of trustee of a trust estate, then, for the purposes of subsection (1), disregard:
  - (a) any grant previously paid or payable to the person; and
  - (b) any application for a grant made by the person;otherwise than in that capacity.
- (3) If the person applies for a grant in the person's own right, then, for the purposes of subsection (1), disregard:
  - (a) any grant previously paid or payable to the person; and
  - (b) any application for a grant made by the person;in the capacity of trustee of a trust estate.

### **20 The CEO of Austrade must decide whether person meets grants entry requirements**

- (1) The CEO of Austrade must decide whether the person met the grants entry requirements at a time the CEO considers appropriate.

Note: The grants entry requirements are the requirements determined under section 21.
- (2) If the CEO of Austrade decides that the person did not meet one or more of the grants entry requirements, the CEO must tell the person in writing which of the requirements the person did not meet.

- (3) Despite subsection (1), the CEO of Austrade is taken to have decided that the person met the grants entry requirements at the appropriate time if the person passed the grants entry test under:
  - (a) the repealed Act; or
  - (b) this Act without the amendments made by the *Export Market Development Grants Legislation Amendment Act 1999*.

## **21 Determination of grants entry requirements to take account of prospects of success of export enterprise**

- (1) The CEO of Austrade may, by legislative instrument, determine the grants entry requirements.
- (2) In determining the grants entry requirements, the CEO of Austrade may determine only requirements that are relevant to the prospects of success of export enterprises in relation to which grants are being sought.
- (3) The determination may require the person:
  - (a) to give the CEO of Austrade particular information contained in existing documents; or
  - (b) to prepare documents containing particular information and give them to the CEO.

## **22 The CEO of Austrade may request information**

- (1) Before deciding whether a person met the grants entry requirements, the CEO of Austrade may give the person a written request to give the CEO information about a specified matter that the CEO needs to make the decision.
- (2) The CEO of Austrade may request the person to provide the information in a specified way, and within a specified period.
- (3) The CEO of Austrade need not decide whether the person met the grants entry requirements if the person does not give the CEO the information requested.
- (4) This section does not limit subsection 72(1).

## Part 4—Eligible products

### 23 Object of Part

- (1) This Part sets out the conditions to be satisfied in deciding if a particular product (whether goods, services, an event, intellectual property or know-how) is an eligible product.
- (2) The underlying principle is that a product should be eligible only if it is substantially of Australian origin.

### 24 Eligible goods

Goods are *eligible goods* if:

- (a) they are made in Australia; or
- (b) the CEO of Austrade is satisfied, in accordance with guidelines determined under paragraph 101(1)(baa), that Australia will derive a significant net benefit from the sale of the goods outside Australia.

Note: Decisions under this section are subject to guidelines determined by the Minister under section 101.

### 25 Eligible services

- (1) Subject to subsection (4), a non-tourism service is an *eligible non-tourism service* if the service is supplied (whether in or outside Australia) to a person who is not a resident of Australia.

Note: For *non-tourism service* see section 107. For *resident of Australia* see section 114.

- (2) Subject to subsection (4), a tourism service is an *eligible tourism service* if the service is supplied in Australia (whether or not through a resident of Australia) to a person that is not a resident of Australia.

Note: For *tourism service* see section 107. For *resident of Australia* see section 114.

- (4) Despite subsection (1) or (2) (as the case requires):
  - (a) a particular non-tourism service; or
  - (b) a particular tourism service;

that, apart from this subsection, would be an eligible non-tourism service or an eligible tourism service (as the case may be), is not such a service if the CEO of Austrade determines, in writing, having regard to all the facts available to him or her, that the Australian input in the service is not sufficient to ensure that Australia will derive a significant net benefit from the supply of the service.

## **25A Eligible events**

- (1) Subject to subsection (2), an event is an *eligible event* if:
- (a) the event is held in Australia; and
  - (b) there is an events promoter for the event; and
  - (c) the events promoter is not, in the opinion of the CEO of Austrade, closely related to the event holder; and
  - (d) the event is not an event of a kind prescribed by the regulations for the purposes of this paragraph.

Note 1: For *event*, *event holder* and *events promoter* see section 107.

Note 2: Decisions whether events promoters are not closely related to event holders are subject to guidelines determined by the Minister under section 101.

- (2) Despite subsection (1), a particular event that, apart from this subsection, would be an eligible event, is not such an event if the CEO of Austrade determines, in writing, having regard to all the facts available to him or her, that the Australian input in the event is not sufficient to ensure that Australia will derive a significant net benefit from the holding of the event.

## **26 Eligible intellectual property**

Intellectual property is *eligible intellectual property* if the CEO of Austrade is satisfied:

- (a) in the case of rights relating to a trade mark—that the trade mark:
  - (i) was first used in Australia; or
  - (ii) has increased in significance or value because of its use in Australia; or
- (b) in the case of rights relating to any other thing—that the thing resulted to a substantial extent from research or work done in Australia.

Note: For *intellectual property* see section 107.

## 27 Eligible know-how

(1) Know-how is *eligible know-how* if the CEO of Austrade is satisfied that it resulted to a substantial extent from research or work done in Australia.

(2) In subsection (1):

*know-how* means private knowledge, information or expertise relating to commercial or industrial operations that:

- (a) is of commercial value; and
- (b) is imparted for the purpose of enabling the recipient to carry out a particular activity.

## **Part 5—Eligible expenses**

### **Division 1—General**

#### **28 Object of Part**

- (1) This Part defines what are the eligible expenses of an applicant for a grant.
- (2) The underlying principle is that only expenses relating to specific promotional activities genuinely incurred by applicants for the purpose of marketing eligible products in foreign countries should qualify.

#### **29 Eligible expenses—general**

Subject to section 30, expenses incurred by an applicant for a grant in respect of a grant year are *eligible expenses* if the following conditions are satisfied:

- (a) the expenses are, under section 33, claimable expenses in respect of an eligible promotional activity;
- (b) if the applicant is an approved joint venture—the expenses are related to the approved activity, project or purpose of the joint venture;
- (c) the expenses were incurred (within the meaning of Division 3) by the applicant:
  - (i) if the applicant is not a grantee in respect of any previous grant year—during the grant year or the immediately preceding year; or
  - (ii) in any other case—during the grant year;
- (d) the expenses, together with other expenses of the applicant that satisfy paragraphs (a) to (c), add up to \$20,000 or more.

Note: For *grant*, *grant year* and *grantee* see section 107.

**30 Eligible expenses—adjustments by the CEO of Austrade**

If the CEO of Austrade adjusts under section 96 the amount that, apart from this section, would be (under section 29) the eligible expenses of an applicant for the grant year, that amount as so adjusted is taken to be the applicant's *eligible expenses* for the grant year.

## **Division 2—Claimable expenses in respect of eligible promotional activities**

### **Subdivision 1—General**

#### **31 Object of Division**

This Division explains:

- (a) what is an eligible promotional activity; and
- (b) what are claimable expenses in respect of such an activity.

#### **32 Meaning of *agent***

In this Division, a reference to an *agent* of an applicant does not include a representative of the applicant referred to in item 1A of the table in section 33.

### **Subdivision 2—Eligible promotional activity and claimable expenses defined**

#### **33 Claimable expenses in respect of eligible promotional activities**

- (1) The activity specified in column 2 of an item in the following table is an *eligible promotional activity* in relation to an applicant.
- (2) The expenses specified in column 3 of an item in the following table, to the extent to which they are not excluded expenses under Subdivision 4, are claimable expenses of the applicant in respect of the activity specified in column 2 of that item.

**Part 5** Eligible expenses

**Division 2** Claimable expenses in respect of eligible promotional activities

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<b>Claimable expenses in respect of eligible promotional activities</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Activity</b>	<b>Expenses</b>
1A	maintaining one or more overseas representatives on a long term basis in foreign countries to the extent to which the representatives are maintained for approved promotional purposes	all reasonable expenses incurred by the applicant in: (a) maintaining the representatives; and (b) meeting the expenses incurred by the representatives in soliciting business for the applicant; up to a limit of: (c) if the applicant is a grantee in respect of any previous grant year—\$200,000 for the grant year; or (d) if the applicant is not a grantee in respect of any previous grant year—\$200,000 for the grant year and the immediately preceding year
1B	engaging as a consultant (either in or outside Australia) one or more persons who, in the opinion of the CEO of Austrade are not closely related to the applicant, to the extent to which the consultants undertake market research, or marketing activities, related to approved promotional purposes	all reasonable expenses incurred by the applicant up to a limit of: (a) if the applicant is a grantee in respect of any previous grant year—\$50,000 for the grant year; or (b) if the applicant is not a grantee in respect of any previous grant year—\$50,000 for the grant year and the immediately preceding year
2	any visit (marketing visit) made by the applicant or its agent to any place in or outside Australia to the extent to which the visit is made for an approved promotional purpose	all expenses: (a) incurred by the applicant in payments to persons that, in the opinion of the CEO of Austrade, were not closely related to the applicant; and (b) that are allowable expenses under section 34

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<b>Claimable expenses in respect of eligible promotional activities</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Activity</b>	<b>Expenses</b>
3	any communication by the applicant or its agent with a potential buyer or a distributor, representative or consultant to the extent to which the communication is made for an approved promotional purpose	all reasonable expenses incurred by the applicant in payments to persons that, in the opinion of the CEO of Austrade, were not closely related to the applicant
4	the provision, primarily for an approved promotional purpose, of free samples to a person that is not a resident of Australia, as follows: (a) provision outside Australia of samples relating to any eligible product of the applicant; (b) provision in Australia of samples relating to eligible tourism services supplied by the applicant	all reasonable expenses incurred by the applicant that are attributable to the actual cost of providing the samples
5	participation by the applicant or its agent in a trade fair, seminar, in-store promotion, international forum, private exhibition or similar promotional event to the extent to which this is done for an approved promotional purpose	all reasonable expenses incurred by the applicant in payments to persons that, in the opinion of the CEO of Austrade, were not closely related to the applicant
6	provision by the applicant or its agent of promotional literature or other advertising material to the extent to which this is done for an approved promotional purpose	all reasonable expenses incurred by the applicant in payments to persons that, in the opinion of the CEO of Austrade, were not closely related to the applicant

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**Part 5** Eligible expenses

**Division 2** Claimable expenses in respect of eligible promotional activities

Section 33

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<b>Claimable expenses in respect of eligible promotional activities</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Activity</b>	<b>Expenses</b>
7	bringing one or more buyers (or potential buyers) that are not residents of Australia to Australia to the extent to which the buyers are brought to Australia for an approved promotional purpose	all expenses: (a) incurred by the applicant in payments to persons that, in the opinion of the CEO of Austrade, were not closely related to the applicant; and (b) that are allowable expenses under section 34A; up to a limit of: (c) if the applicant is a grantee in respect of any previous grant year—\$45,000 for the grant year; or (d) if the applicant is not a grantee in respect of any previous grant year—\$45,000 for the grant year and the immediately preceding year
8	obtaining, under the law of a foreign country: (a) the grant or registration; or (b) the extension of the term of registration; or (c) the extension of the period of registration; of rights in relation to eligible intellectual property, if the grant, registration or extension is for an approved promotional purpose	all reasonable expenses incurred by the applicant in payments to persons that, in the opinion of the CEO of Austrade, were not closely related to the applicant, up to a limit of: (a) if the applicant is a grantee in respect of any previous grant year—\$50,000 for the grant year; or (b) if the applicant is not a grantee in respect of any previous grant year—\$50,000 for the grant year and the immediately preceding year
9	obtaining insurance against costs likely to be incurred in respect of the protection of rights in relation to eligible intellectual property, if the rights have been obtained: (a) under the law of a foreign country; and (b) for an approved promotional purpose	all reasonable expenses incurred by the applicant in payments to persons that, in the opinion of the CEO of Austrade, were not closely related to the applicant

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- Note 1: For *approved promotional purpose* see Subdivision 3. For *foreign country* see section 22 of the *Acts Interpretation Act 1901*.
- Note 2: Decisions whether a person is not closely related to an applicant are subject to guidelines determined by the Minister under section 101.
- Note 3: Under section 96, the CEO of Austrade can make certain adjustments if he or she is satisfied that any expenses are unreasonable.

- (3) However, only 65% of any expenses incurred by the applicant on first class air fares is to be taken into account in working out the applicant's claimable expenses.

### **34 Expenses relating to a marketing visit**

- (1) This section sets out the allowable expenses of an applicant in respect of a marketing visit (see item 2 of the table in section 33).
- (2) Subject to subsection (6), an air fare for any air travel reasonably undertaken by the applicant or its agent is an allowable expense.
- Note: Only 65% of a first class air fare is to be taken into account as a claimable expense. See subsection 33(3).
- (3) Subject to subsection (6), all transport expenses (other than air fares) in respect of any travel reasonably undertaken by the applicant or its agent are allowable.
- (4) If the visit is made to a place outside Australia:
- (a) the applicant is taken, for the purposes of this subsection, to have incurred general expenses of \$300 in respect of each day (*working day*) during the visit that was primarily devoted to furthering the approved promotional purpose for which the visit was made; and
  - (b) subject to subsections (5) and (6), those expenses are allowable in respect of each working day in the visit.
- (5) Expenses are not allowable under subsection (4) in respect of more than 21 working days.
- (6) If an agent (*first agent*) of the applicant who is a relative of:
- (a) the applicant; or
  - (b) another agent of the applicant;
- meets the applicant or the other agent (as the case requires) outside Australia while both:
- (c) the first agent; and

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(d) the applicant or other agent;  
are making marketing visits outside Australia, the expenses of only one of them (being the one nominated by the applicant) are allowable expenses of the applicant. However, this subsection does not apply if the first agent, or (in a case where 2 agents meet outside Australia) each of the agents, has been working on a full-time basis for the applicant for the immediately preceding year.

Note: For *relative* see section 107.

**34A Expenses relating to bringing buyers to Australia**

(1) This section sets out the allowable expenses of an applicant in respect of bringing a buyer to Australia (see item 7 of the table in section 33).

(2) Subject to subsections (5) and (6), an air fare for any air travel reasonably undertaken by the buyer is an allowable expense.

Note: Only 65% of a first class air fare is to be taken into account as a claimable expense. See subsection 33(3).

(3) Subject to subsections (5) and (6), all transport expenses (other than air fares) in respect of any travel reasonably undertaken by the buyer are allowable.

(4) Subject to subsections (5) and (6), all reasonable expenses for accommodation and meals for the buyer are allowable.

(5) Expenses that are also claimable expenses in respect of another activity mentioned in the table in section 33 are not allowable.

(6) Expenses exceeding a total of \$7,500 in respect of bringing any one buyer to Australia on any one occasion are not allowable.

Note: The overall cap on expenses in respect of bringing buyers to Australia is \$45,000 (see item 7 of the table in section 33).

**Subdivision 3—Approved promotional purposes**

**36 Object of Subdivision**

This Subdivision explains what are approved promotional purposes.

### **37 Approved promotional purpose—eligible products**

- (1) For the purposes of section 33, an eligible promotional activity in relation to an applicant is for an ***approved promotional purpose*** if it is carried out for the purpose of creating, seeking or increasing demand or opportunity in a foreign country for any of the following:
- (a) eligible goods owned by the applicant and that the applicant intends to sell for export or to export and sell;
  - (b) if the applicant is making goods in Australia—eligible goods:
    - (i) made in Australia by the applicant; and
    - (ii) that any person intends to sell for export or to export and sell;
  - (c) eligible goods that:
    - (i) are not made in Australia; and
    - (ii) any person intends to sell outside Australia;
  - (d) if the applicant is not an approved body—eligible services that the applicant intends to sell to persons that are not residents of Australia;
  - (da) if the applicant is not an approved body—eligible tourism services that the applicant intends to sell, or has sold:
    - (i) to a person that is a resident of Australia; but
    - (ii) for sale by that resident, in the course of trade, to persons that are not residents of Australia;
  - (e) if the applicant is not an approved body—eligible intellectual property or eligible know-how:
    - (i) owned by the applicant; and
    - (ii) that the applicant intends to dispose of;
  - (f) if the applicant is an approved body—eligible intellectual property or eligible know-how:
    - (i) owned by another person; and
    - (ii) that the other person intends to dispose of;
  - (g) if the applicant is an approved body:
    - (i) eligible goods made in Australia and that any other person intends to sell for export or to export and sell; or
    - (ii) eligible services supplied by another person.

Note 1: For ***foreign country*** see section 22 of the *Acts Interpretation Act 1901*. For ***export*** see section 107 of this Act. For ***sell*** see section 109 of this Act and for ***dispose*** see section 111 of this Act.

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Note 2: Decisions whether goods are made in Australia are subject to guidelines determined by the Minister under section 101.

(1A) For the purposes of section 33, if an applicant is incorporated under the *Corporations Act 2001*, the CEO of Austrade may determine that an eligible promotional activity in relation to the applicant is for an **approved promotional purpose** if:

- (a) a related entity of the applicant satisfies the requirements of paragraph (1)(a), (c), (d), (da) or (e); and
- (b) the activity in relation to the applicant would be for an approved promotional purpose if instead the applicant had satisfied the requirements of that paragraph.

Note: For **related entity** see subsection (4).

(2) For the purposes of section 33, an eligible promotional activity in relation to an applicant is for an **approved promotional purpose** if it is carried out for the purpose of promoting an eligible event, for which the applicant is an events promoter, to persons outside Australia.

(3) An eligible promotional activity is not for an **approved promotional purpose** if it is carried out for the purpose of soliciting sponsorship for an eligible event.

*Definitions*

(4) For the purposes of subsection (1A), an entity (the **first entity**) is a **related entity** of another entity (the **second entity**) if:

- (a) the first entity controls, or is controlled by, the second entity (within the meaning of section 50AA of the *Corporations Act 2001*); or
- (b) the same shareholder or shareholders own all the shares in both the first entity and the second entity; or
- (c) the first entity is a director of the second entity.

(5) In this section:

**entity** means:

- (a) an individual who is a resident of Australia; or
- (b) a body incorporated under the *Corporations Act 2001*.

### **38 Approved promotional purpose—return on disposal of eligible intellectual property etc.**

- (1) If the applicant is not an approved body, then, for the purposes of section 33, an eligible promotional activity in relation to the applicant is also for an *approved promotional purpose* if it is carried out for the purpose of increasing the applicant's return on the disposal by the applicant of eligible intellectual property or eligible know-how.
- (2) If the applicant is an approved body, then, for the purposes of section 33, an eligible promotional activity in relation to the applicant is also for an *approved promotional purpose* if it is carried out for the purpose of increasing another person's return on the disposal by the other person of eligible intellectual property or eligible know-how, to a third party.
- (3) The return referred to in subsection (1) or (2):
  - (a) may be a return receivable at or after the time of disposal of the intellectual property or know-how; and
  - (b) must be a return by way of royalty or licence fee.

### **Subdivision 4—Excluded expenses**

#### **39 Object of Subdivision**

This Subdivision sets out the expenses that are excluded expenses for the purposes of subsection 33(2).

#### **40 Guide to Subdivision**

The following table lists the types of expenses that are excluded expenses and the sections dealing with them.

<b>List of excluded expenses</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Expense</b>	<b>Section</b>
1	Capital expenses	41
2	Expenses incurred when applicant not resident of Australia	42

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**Division 2** Claimable expenses in respect of eligible promotional activities

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<b>List of excluded expenses</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Expense</b>	<b>Section</b>
3	Expenses related to trade with New Zealand	43
4	Expenses incurred in breach of trade sanction	44
5	Expenses (other financial assistance schemes)	45
6	Expenses for which applicant is paid	46
7	Expenses disclosed after submitting application	47
8	Taxes etc.	48
9	Expenses incurred as commission, discounts etc.	49
13	Expenses of approved joint venture	53
14	Expenses of applicant carrying on business in different capacities	54
16	Expenses relating to illegal activities	56
16A	Expenses of over \$10,000 paid in cash by applicant	56A
17	Expenses associated with publications, films and computer games of certain classifications	57
18	Expenses associated with commercial content services that specialise in prohibited content or potential prohibited content	57A
19	Expenses associated with telephone sex services	57B

**41 Capital expenses**

- (1) Expenses of an applicant that are of a capital nature are excluded.
- (2) However, subsection (1) does not apply to expenses covered by item 8 or 9 of the table in section 33.

#### **42 Expenses incurred when applicant not resident of Australia**

Expenses that were incurred by an applicant (other than an approved joint venture) at a time when the applicant was not a resident of Australia are excluded.

Note: For *resident of Australia* see section 114.

#### **43 Expenses related to trade with New Zealand**

Expenses of an applicant are excluded if they were incurred in respect of an eligible promotional activity related to trade with New Zealand.

#### **44 Expenses incurred in breach of trade sanction**

Expenses of an applicant are excluded if they were incurred in respect of an eligible promotional activity related to trade with a country that the Minister declares, by legislative instrument, for the purposes of this section, to be subject to trade sanctions.

#### **45 Expenses (other financial assistance schemes)**

Expenses of an applicant are excluded if they were incurred for an eligible promotional activity related to an approved promotional purpose that was, when the expenses were incurred, approved for the purposes of a scheme (other than the scheme provided for under this Act):

- (a) administered by the CEO of Austrade; and
- (b) making provision for financial assistance.

#### **46 Expenses for which applicant is paid**

- (1) Expenses of an applicant in respect of an eligible promotional activity related to a particular approved promotional purpose are excluded to the extent (if any) to which the applicant has been paid, or is entitled to be paid, any consideration for any thing done by the applicant to further that purpose.
- (1A) However, subsection (1) does not apply to expenses of an applicant incurred as an events promoter.

**Part 5** Eligible expenses

**Division 2** Claimable expenses in respect of eligible promotional activities

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- (2) For the purposes of subsection (1), any action by the applicant to write off, waive or otherwise release a person from, an obligation to pay any consideration is to be disregarded.

**47 Expenses disclosed after submitting application**

- (1) This section applies if:
- (a) on one or more occasions after applying for a grant in respect of a grant year, but before the CEO of Austrade determines whether the applicant is entitled to the grant, an applicant discloses to the CEO eligible expenses (*undisclosed expenses*) that were not disclosed in the application; and
  - (b) the total amount of the undisclosed expenses is more than 10% of the amount of the eligible expenses disclosed in the application (*disclosed expenses*).
- (2) The undisclosed expenses of the applicant are excluded to the extent to which they exceed 10% of the disclosed expenses.

**48 Taxes etc.**

- (1) Subject to subsection (2), expenses of an applicant are excluded if they were incurred in payment of a tax, levy or other contribution under an Australian law.

Note: For *Australian law* see section 107.

- (2) Subsection (1) does not apply to charge imposed by the *Passenger Movement Charge Act 1978*.

**49 Expenses incurred as commission, discounts etc.**

- (1) Expenses of an applicant are excluded if they were incurred as any one or more of the following:
- (a) commission or other remuneration paid, otherwise than by way of salary, retainer or fee, in respect of commercial transactions relating to eligible products;
  - (b) remuneration by way of salary, retainer or fee, to the extent that the remuneration is determined, directly or indirectly, by reference to the extent or value of any commercial transactions relating to eligible products;

- (c) discounts and credits, or amounts equivalent to discounts or credits, allowed or paid in relation to commercial transactions relating to eligible products.

Note: For *commercial transaction* see subsection (2).

- (2) In subsection (1):

*commercial transaction*, in relation to an eligible product, means:

- (a) the sale, supply or disposal of the product; and
- (b) in the case of eligible intellectual property or eligible know-how—the obtaining of an increased return on the disposal of the intellectual property or know-how.

### **53 Expenses of approved joint venture**

- (1) Expenses of an approved joint venture in respect of a grant year are excluded to the extent (if any) to which they were incurred by:
  - (a) a member of the joint venture at a time when the member was not a resident of Australia; or
  - (b) a member of the joint venture whose income for the grant year exceeds \$50,000,000.
- (2) Expenses of an approved joint venture are excluded to the extent (if any) to which they were incurred in breach of any condition to which its approval as a joint venture is subject.

Note: For *approved joint venture* and *income* see section 107. For *resident of Australia* see section 114.

### **54 Expenses of applicant carrying on business in different capacities**

- (1) If an applicant has applied for a grant in the capacity of trustee of a trust estate, any expenses of the applicant incurred otherwise than in that capacity are excluded.
- (2) If an applicant that has applied for a grant in the applicant's own right is also a trustee of a trust estate, any expenses of the applicant incurred in the capacity of trustee of the trust estate are excluded.

### **56 Expenses relating to illegal activities**

Expenses of an applicant in respect of an eligible promotional activity related to a particular approved promotional purpose are excluded if any thing done in furthering the purpose:

- (a) was, at the time when it was done, an offence against a law of the place where it was done; or
- (b) would have been, at that time, an offence against an Australian law if it had been done in Australia.

Note: For *Australian law* see section 107.

### **56A Expenses of over \$10,000 paid in cash by applicant**

Expenses of an applicant in respect of a grant year are excluded to the extent (if any) that:

- (a) the applicant pays off the expenses by physically transferring currency to the persons to whom the expenses are payable; and
- (b) the amount of the expenses is greater than \$10,000.

### **57 Expenses associated with publications, films and computer games of certain classifications**

*Publications, films and computer games that have been classified*

- (1) Expenses of an applicant are excluded if they were incurred in respect of an eligible promotional activity carried out for an approved promotional purpose relating to:
  - (a) a publication that has been classified RC, Category 2 restricted or Category 1 restricted by the Classification Board; or
  - (b) a film that has been classified RC or X by the Classification Board; or
  - (c) a computer game that has been classified RC by the Classification Board.

*Publications, films and computer games that have not been classified*

- (2) Expenses of an applicant are excluded if:

- (a) they were incurred in respect of an eligible promotional activity carried out for an approved promotional purpose relating to a publication, a film or a computer game; and
- (b) the publication, film or computer game has not been classified by the Classification Board; and
- (c) the CEO of Austrade has reason to believe that the publication, film or computer game will be classified as mentioned in subsection (1).

Note: For *Classification Board, computer game, film* and *publication* see section 107.

### **57A Expenses associated with commercial content services that specialise in prohibited content or potential prohibited content**

Expenses of an applicant are excluded if they were incurred in respect of an eligible promotional activity carried out for an approved promotional purpose relating to a commercial content service that specialises in:

- (a) prohibited content; or
- (b) potential prohibited content.

Note: For *commercial content service, potential prohibited content* and *prohibited content* see section 107.

### **57B Expenses associated with telephone sex services**

Expenses of an applicant are excluded if they were incurred in respect of an eligible promotional activity carried out for an approved promotional purpose relating to a telephone sex service.

Note: For *telephone sex service* see section 107.

## **Division 3—When are expenses incurred?**

### **58 General rule**

- (1) Subject to section 59, an expense is taken to have been incurred by an applicant only at the time when the amount of the expense is acquitted.
- (2) For the purposes of subsection (1), the amount of an expense incurred by an applicant is taken to have been *acquitted* at the time when that amount:
  - (a) is paid off; or
  - (b) is set off, with the written consent of the person (*creditor*) to whom it is payable, against money owed by the creditor or another person to the applicant.
- (3) For the purposes of subsection (2), if an amount is paid by cheque or payment order, the amount is taken to be paid when the bank or financial institution on which the cheque or payment order is drawn debits the drawer's account.
- (4) For the purposes of subsection (2), the transfer or issue to a person of shares in a company does not constitute an acquittal.

### **59 Expenses relating to goods etc. provided during grant year**

If:

- (a) apart from this section, the amount of an expense for goods or services would be taken to have been incurred during a grant year; and
- (b) those goods or services, or some of them, were not provided before the end of the grant year;

the amount, or the part of the amount relating to the goods or services that were not so provided, is to be taken, if the CEO of Austrade so determines, to be incurred only when the goods or services are provided.

## **Part 6—Amount of grant**

### **Division 1—General**

#### **60 Object of Part**

This Part sets out how to work out the amount payable to an applicant that is entitled to a grant in respect of a grant year.

#### **61 Guide to Part**

- (1) Division 2 deals with the first part of the calculation process. It explains how to work out the maximum amount (the provisional grant amount) that each applicant entitled to a grant in respect of a grant year could receive.
- (2) As, however, the amount available to meet all payments of grant falling due in a financial year is fixed, it follows that in some years there may not be sufficient funds to meet all provisional grant entitlements in full.
- (3) Division 3 sets out the capping mechanism to be used in such circumstances to ensure that all applicants entitled to a grant receive a share of the amount available for distribution. Under the system to be applied, applicants whose provisional grant amount does not exceed a predetermined amount set by the Minister under section 68 (the initial payment ceiling amount) will not be affected and will receive their full entitlement. Only those who would have been entitled to higher amounts will have their prospective entitlements reduced.
- (4) Division 4 lets the Minister and the CEO of Austrade determine some of the things affecting the amount of a grant.

## Division 2—How to work out an applicant's provisional grant amount

### 62 Guide to Division

An applicant's provisional grant amount for a grant year is to be worked out under section 63 unless:

- (a) Division 3 of Part 8 (Power to adjust expenses and provisional grant amounts) applies; or
- (b) the applicant is a member of a related company group.

Sections 64 and 65 deal with these 2 cases.

### 63 General rule

- (1) Subject to subsections (2), (3) and (4), an applicant's **provisional grant amount** for a grant year is 50% of the applicant's eligible expenses for the grant year less \$5,000.
- (2) If the applicant's eligible expenses for the grant year do not include expenses in respect of any communication with a potential buyer or a distributor, representative or consultant (see item 3 of the table in section 33), then, subject to subsection (4), the applicant's **provisional grant amount** for the grant year is the sum of:
  - (a) the amount worked out under subsection (1) in relation to the applicant; and
  - (b) 3% of that amount.
- (3) If:
  - (a) the applicant is not an approved body; and
  - (b) the applicant is a grantee in respect of 2 or more previous grant years; and
  - (c) if the application for a grant in respect of the grant year is made in the applicant's own right—the application sets out a statement that the applicant chooses grants option A in relation to the grant year; and
  - (d) if the application for a grant in respect of the grant year is made in the applicant's capacity as trustee of a trust estate—the application sets out a statement that the applicant

chooses, in that capacity, grants option A in relation to the grant year;

then, subject to subsection (4), the applicant's *provisional grant amount* for the grant year is the lesser of the following amounts:

- (e) the amount that would be the applicant's provisional grant amount under subsection (1) or (2) (as the case may be) if this subsection did not apply to the applicant;
- (f) the amount ascertained in accordance with a legislative instrument made by the Minister for the purposes of this paragraph.

Note: For *grantee* see section 107.

- (3A) An instrument made under paragraph (3)(f) may make provision with respect to a matter by conferring on the CEO of Austrade a power to make a decision of an administrative character.
- (4) An applicant's provisional grant amount for a grant year may not exceed \$150,000.

#### **64 If applicant's eligible expenses are adjusted by the CEO of Austrade**

If the CEO of Austrade adjusts the applicant's eligible expenses under section 96, the applicant's *provisional grant amount* for the grant year is the amount worked out under this Division using the adjusted eligible expenses.

#### **65 Applicant is a member of a related company group**

- (1) This section applies to an applicant if:
  - (a) the applicant is a body corporate; and
  - (b) at the end of the grant year the applicant was a member of a related company group (other than an approved joint venture); and
  - (c) other members of the group have also applied for a grant in respect of the grant year; and
  - (d) the group's grant amount exceeds \$250,000.

Note: For *related company group* and *approved joint venture* see section 107. For *group's grant amount* see subsection (3).

- (2) The applicant's *provisional grant amount* for the grant year is worked out by using the formula:

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$$\frac{\$250,000 \times \text{Standard amount}}{\text{Group's grant amount}}$$

(3) In this section:

***group's grant amount*** means the amount obtained by:

- (a) working out the amount that would be (under section 63 or 64) the provisional grant amount of each of the members of the related company group that have applied for a grant in respect of the grant year if this section did not apply to the member; and
- (b) adding up all those amounts.

***standard amount*** means the amount that would be (under section 63 or 64) the applicant's provisional grant amount for the grant year if this section did not apply to the applicant.

## **Division 3—How to work out amount of grant**

### **66 Object of Division**

This Division sets out how to work out the actual amount that an applicant entitled to a grant in respect of a grant year will receive.

### **67 Amount of grant**

- (1) If an applicant is entitled to a grant in respect of a grant year, the amount of the grant is worked out in accordance with the following subsections.
- (2) If the applicant's provisional grant amount for the grant year does not exceed the initial payment ceiling amount for the grant year, the amount of the grant is equal to the applicant's provisional grant amount.
- (3) If the applicant's provisional grant amount for the grant year exceeds the initial payment ceiling amount for the grant year:
  - (a) multiply the amount of the excess by the payout factor for the grant year; and
  - (b) add the amount obtained under paragraph (a) to the initial payment ceiling amount.

The result is the amount of grant payable to the applicant for the grant year.

Note 1: For *initial payment ceiling amount*, *provisional grant amount* and *payout factor* see section 107.

Note 2: The payout factor for the grant year will only be known after the balance distribution date for the year following the grant year (See subsections 69(1) and (2)).

## **Division 4—Initial payment ceiling amount, balance distribution date and payout factor**

### **68 Determination of initial payment ceiling amount etc.**

- (1) The Minister may, from time to time, determine in writing:
  - (a) the amount that is the initial payment ceiling amount for:
    - (i) the grant year (*initial year*) immediately preceding the year that is current when the determination comes into force; and
    - (ii) each grant year following the initial year; and
  - (b) the date:
    - (i) in the grant year that is current when the determination comes into force; and
    - (ii) in each subsequent grant year;  
that is the balance distribution date for that year.
- (2) The balance distribution date for the grant year that is current when the determination comes into force must be later than the date on which the determination comes into force.
- (3) The Minister must cause the determination to be tabled in each House of the Parliament within 15 sitting days of that House after the determination is made.

### **69 Payout factor**

- (1) For the purposes of subsection 67(3), the CEO of Austrade must, in respect of each grant year:
  - (a) work out in accordance with the regulations; and
  - (b) determine in writing;  
the payout factor that, in calculating the amount payable to each applicant:
    - (c) entitled to receive a grant in respect of that year; and
    - (d) whose provisional grant amount in respect of that year exceeds the initial payment ceiling amount for that year;is to be used to adjust the amount of the excess.

Note: For *provisional grant amount* and *initial payment ceiling amount* see section 107.

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- (2) The determination must be made as soon as practicable after the balance distribution date for the following year.
- (3) The purpose, in applying the payout factor, is to ensure that the amount of each grant payable in respect of the grant year is capped at the appropriate level so that all payments of grant that become due in the year following the grant year are able to be met from the money available for that purpose.
- (4) The regulations may prescribe the method for working out the factor that will be the payout factor for a grant year.

## **Part 7—Application for, and payment of, grant**

### **Division 1—Applying for a grant**

#### **70 How to apply for a grant**

- (1) A person may make an application to the CEO of Austrade for a grant in respect of a grant year.
- (2) The application must:
  - (a) be in a form, and be made in a manner, approved by the CEO of Austrade; and
  - (b) be made within:
    - (i) 5 months after the end of the grant year; or
    - (ii) if the circumstances specified in an instrument under subsection (4) exist in relation to the application—such greater number of months after the end of the grant year as is specified in the instrument.
- (2A) If:
  - (a) an applicant is not an approved body; and
  - (b) the applicant is a grantee in respect of 2 or more previous grant years; and
  - (c) the applicant is applying in the applicant's own right;the application must set out not more than one of the following statements:
  - (d) a statement that the applicant chooses grants option A in relation to the grant year;
  - (e) a statement that the applicant chooses grants option B in relation to the grant year.
- (2B) If:
  - (a) an applicant is not an approved body; and
  - (b) the applicant is a grantee in respect of 2 or more previous grant years; and
  - (c) the applicant is applying in the applicant's capacity as trustee of a trust estate;

the application must set out not more than one of the following statements:

- (d) a statement that the applicant chooses, in that capacity, grants option A in relation to the grant year;
- (e) a statement that the applicant chooses, in that capacity, grants option B in relation to the grant year.

(2C) If:

- (a) an applicant is not an approved body; and
- (b) the applicant is a grantee in respect of 2 or more previous grant years; and
- (c) if the applicant is applying in the applicant's own right—the application sets out a statement that the applicant chooses grants option B in relation to the grant year; and
- (d) if the applicant is applying in the applicant's capacity as trustee of a trust estate—the application sets out a statement that the applicant chooses, in that capacity, grants option B in relation to the grant year; and
- (e) a determination is in force under section 73A;

the application must be accompanied by:

- (f) such information (if any) as is specified in the determination; and
  - (g) such documents (if any) as are specified in the determination.
- (3) If the person is an approved joint venture, the application must be made on behalf of the joint venture by the nominated contact member.

Note: For *grant*, *grant year*, *approved joint venture* and *nominated contact member* see section 107.

- (4) The CEO of Austrade may, by legislative instrument, specify circumstances, and a number of months, for the purposes of subparagraph (2)(b)(ii).

## **71 Application made when the CEO of Austrade etc. receives it**

An application is not taken to have been made until it has been received by:

- (a) the CEO of Austrade; or
- (b) a person appointed by the CEO to receive applications under this section.

**72 The CEO of Austrade may ask applicant etc. for further information etc.**

- (1) The CEO of Austrade may:
- (a) by written notice given to an applicant, ask the applicant; or
  - (b) if the applicant is a body corporate that was a member of a related company group as at the end of the grant year to which the application relates—by written notice given to each body corporate that was a member of the group, ask each of these bodies;
- to give to the CEO specified information, or to make available to the CEO specified books, records or documents, that the CEO may require to perform his or her functions under this Act.
- (2) The CEO of Austrade may, by written notice to the applicant, ask the applicant to give to the CEO any written consent (whether of the applicant or of any associate of the applicant) specified in the notice that the CEO requires to enable criminal records to be checked for the purposes of applying Division 4 of Part 3 and section 86 to the applicant.
- Note: Part VIIC of the *Crimes Act 1914* exempts a person from having to disclose spent convictions.
- (2A) The CEO of Austrade may, by written notice to the applicant, ask the applicant to give to the CEO any written consent (whether of the applicant or an associate of the applicant) specified in the notice that the CEO requires to enable the CEO to obtain information to determine, in accordance with guidelines determined under paragraph 101(1)(bb), whether:
- (a) the applicant is a fit and proper person to receive a grant; or
  - (b) any associate of the applicant is a fit and proper person to receive a grant.
- (2B) In subsection (2A):
- associate* has the same meaning as in section 87AA.
- (3) If the CEO of Austrade makes a form available for the purpose of making an application for a grant, the form must contain an explanation of the effect of subsections (1), (2) and (2A) and paragraph 73(1)(b). If the CEO does not make such a form available, the CEO must give to each applicant a document that contains an explanation of the effect of those provisions.

**73 Grounds on which the CEO of Austrade may refuse to consider application**

- (1) The CEO of Austrade may refuse to consider an application if:
- (a) the application is not in accordance with paragraph 70(2)(a);  
or
  - (b) the applicant, or (if the applicant is a body corporate that was a member of a related company group) a related company, has not complied with a request of the CEO under section 72;  
or
  - (c) an individual who has helped, in a prescribed capacity, to prepare the application has not complied with a request of the CEO under section 79.

Note: For *prescribed capacity* see subsection 74(2)

- (2) The CEO of Austrade must not consider an application made more than 5 months after the end of the grant year to which it relates.
- (3) The CEO of Austrade must not consider an application if the application breaches subsection 70(2A), (2B) or (2C).

**73A Applicant chooses grants option B—information or documents to accompany application**

The CEO may, by legislative instrument, specify information or documents for the purposes of subsection 70(2C).

## **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 the CEO of 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 the CEO of 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 The CEO of 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, the CEO of 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.

## **77 When applicant may make fresh application**

- (1) If an application (*first application*) is taken (under section 75) not to have been made, the applicant may make a fresh application under subsection 70(1) if:
  - (a) when the first application was made, the individual concerned was not yet disqualified; or
  - (b) when the first application was made:
    - (i) the individual concerned was disqualified; but
    - (ii) the applicant neither knew, nor had reasonable grounds to suspect, that the individual was disqualified.
- (2) The fresh application must be made within:
  - (a) 90 days after the applicant receives the notice referred to in section 76; or
  - (b) 5 months after the end of the grant year;whichever is the later.

## **78 Disqualified individual**

- (1) If an individual has been convicted of:
  - (a) an offence that under subsection 206B(1) of the *Corporations Act 2001* disqualifies a person from managing a corporation; or
  - (c) an offence against section 39 of the repealed Act; or
  - (d) an offence:
    - (i) against section 6 of the *Crimes Act 1914*; or
    - (ii) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or

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- (iii) against section 11.1, 11.4 or 11.5 of the *Criminal Code*;  
or
  - (iv) against a provision of a law of a State or Territory that corresponds to any of the provisions referred to in subparagraphs (i) to (iii);  
that relates to an offence referred to in paragraph (a) or (c); or
  - (e) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 or 137.2 of the *Criminal Code* that relates to an application for a grant;
- the individual is **disqualified** from preparing applications for the disqualification period.
- (2) For the purposes of this section, the **disqualification period** is the period starting on the day on which the conviction was recorded and ending:
- (a) if the conviction was for a term of imprisonment—5 years after the individual convicted was released from prison; or
  - (b) in any other case—5 years after the day on which the conviction was recorded.

**79 Consent to enable check of criminal records**

The CEO of Austrade may, by written notice to an individual who has helped, in a prescribed capacity, to prepare an application, ask the individual to give to the CEO any written consent that the CEO requires to enable criminal records to be checked for the purposes of applying this Division to the individual.

Note 1: For **prescribed capacity** see subsection 74(2).

Note 2: Part VIIC of the *Crimes Act 1914* exempts a person from having to disclose spent convictions.

## **Division 3—Determining entitlement to, and making payment of, grant**

### **Subdivision 1—Duties of the CEO of Austrade**

#### **80 The CEO of Austrade must determine applicant's entitlement to grant etc.**

- (1) The CEO of Austrade must:
  - (a) subject to section 73, consider each application for a grant; and
  - (b) determine whether the applicant is entitled to a grant; and
  - (c) if the CEO determines that the applicant is entitled to a grant—determine the amount of the grant as soon as practicable.
- (2) The applicant becomes entitled to the grant when the CEO of Austrade makes the determination under paragraph (1)(b).

### **Subdivision 2—When grant payable**

#### **81 Payment where applicant becomes entitled to grant before balance distribution date**

- (1) If a determination by the CEO of Austrade that an applicant is entitled to a grant in respect of a grant year (*first determination*) is made before the balance distribution date for the year following the grant year, the following provisions apply.

Note: For *balance distribution date* see section 107.
- (2) If the applicant's provisional grant amount for the grant year does not exceed the initial payment ceiling amount for the grant year, the grant becomes (subject to section 83) payable to the applicant when the CEO of Austrade determines the amount of the grant under paragraph 80(1)(c).

Note: For the amount of the grant see subsection 67(2).
- (3) If the applicant's provisional grant amount for the grant year exceeds the initial payment ceiling amount for the grant year:

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- (a) the applicant is, on the making of the first determination (but subject to section 83), entitled to be paid an advance on account of the grant equal to the initial payment ceiling amount; and
- (b) subject to section 83, the grant becomes payable to the applicant when the CEO of Austrade determines the amount of the grant under paragraph 80(1)(c).

Note 1: The amount of the grant may be determined in this case only after the balance distribution date for the year following the grant year. The applicant is then entitled to receive the amount of the grant less any advance on account of the grant paid to the applicant. For the amount of the grant see subsection 67(3).

Note 2: Subdivision 3 sets out the circumstances in which a grant is not payable to an applicant.

**82 Payment where applicant becomes entitled to grant after balance distribution date**

If a determination by the CEO of Austrade that an applicant is entitled to a grant in respect of a grant year is made after the balance distribution date for the year following the grant year, then, subject to section 83, the grant becomes payable:

- (a) if the CEO determines the amount of the grant before the 1 July next following the balance distribution date—on that 1 July; or
- (b) in any other case—on the day on which the amount of the grant is determined.

Note 1: For the amount of the grant see section 67.

Note 2: Subdivision 3 sets out the circumstances in which a grant is not payable to an applicant.

**83 Payment of grant—applicant member of a related company group**

- (1) If section 65 applies to an applicant for a grant, the grant, or an advance on account of the grant, becomes payable to the applicant when:
  - (a) the determination by the CEO of Austrade under paragraph 80(1)(c) in relation to the applicant; and
  - (b) the CEO's determination under paragraph 80(1)(c) in relation to each company that:

- (i) is related to the applicant; and
  - (ii) has also applied for a grant;
- have been finalised.

Note: For *related company* see section 107. For *finalised* see subsection (2).

- (2) For the purposes of subsection (1), a determination under paragraph 80(1)(c) is *finalised* when:
  - (a) the determination; and
  - (b) any decision of a court affecting that determination;may no longer be, or is not, subject to a review by, or an appeal to, another court.
- (3) In subsection (2):

*court* includes the Administrative Appeals Tribunal.

Note: Subdivision 3 sets out the circumstances in which a grant is not payable to an applicant.

#### **84 Payment of grant—approved joint venture**

A grant, or an advance on account of a grant, that is payable to an approved joint venture is to be paid to the nominated contact member.

Note: For *nominated contact member* see section 107.

#### **Subdivision 3—Circumstances in which grant not payable**

##### **85 Person not resident of Australia**

- (1) Despite Subdivision 2, a grant, or an advance on account of a grant, is not payable to a person if, at the time when, or at any time after, the person becomes entitled to the grant or advance, the person ceases to be a resident of Australia.
- (2) Subsection (1) does not affect the validity of a payment of grant, or of an advance on account of grant, to the person before the person ceased to be a resident of Australia.

Note: For *resident of Australia* see section 114.

### **85A Person without an ABN**

- (1) Despite Subdivision 2, a grant, or an advance on account of a grant, is not payable to a person if, at the time when, or at any time after, the person becomes entitled to the grant or advance, the person, or in the case of a joint venture, the nominated contact person, does not have an Australian Business Number (ABN).
- (2) Subsection (1) does not affect the validity of a payment of grant, or of an advance on account of grant, to the person at a time when the person had an ABN.

Note: For *ABN* see section 107.

### **86 Disqualifying conviction outstanding against person**

- (1) Despite Subdivision 2, a grant, or an advance on account of a grant, is not payable to a person if, at the time when, or at any time after, the person becomes entitled to the grant or advance, there is a disqualifying conviction outstanding against:
  - (a) if paragraph (b) does not apply—the person; or
  - (b) if the person is entitled to the grant or advance in the capacity of trustee of a trust estate—the person or any beneficiary of the trust estate.
- (2) Subsection (1) does not affect the validity of a payment of grant, or of an advance on account of grant, to the person at a time when there was no disqualifying conviction outstanding against the person, or the person or any beneficiary of the trust estate, as the case may be.

Note: For *disqualifying conviction* see section 107.

### **87 Person under insolvency administration**

- (1) Despite Subdivision 2, a grant, or an advance on account of a grant, is not payable to a person if, at the time when, or at any time after, the person becomes entitled to the grant or advance:
  - (a) if paragraph (b) does not apply—the person or (where applicable) an associate of the person; or
  - (b) if the person is entitled to the grant or advance in the capacity of trustee of a trust estate:
    - (i) the person or (where applicable) an associate of the person; or

- (ii) any beneficiary of the trust estate or (where applicable) an associate of the beneficiary;  
is under insolvency administration.
- (2) Subsection (1) does not affect the validity of a payment of grant, or of an advance on account of grant, to the person at a time when:
- (a) if paragraph (1)(a) applies to the person—neither the person, nor any associate of the person; or
  - (b) if paragraph (1)(b) applies to the person—neither the person nor any other person referred to in that paragraph;
- was under insolvency administration.

Note: For *associate* see section 107. For *under insolvency administration* see Subdivision 4 of this Division.

### **87A Provider of course to overseas students is not registered**

- (1) Despite Subdivision 2, a grant, or an advance on account of a grant, is not payable to a person that provides a course to overseas students who are in Australia if, at the time when, or at any time after, the person becomes entitled to the grant or advance the person is not a registered provider of that course.
- (2) Subsection (1) does not affect the validity of a payment of grant, or of an advance on account of grant, to the person at a time when the person was a registered provider of the course.

Note: For *course*, *overseas student* and *registered provider* see section 107.

### **87AA Person or associate is not fit and proper**

- (1) Despite Subdivision 2, a grant, or an advance on account of a grant, is not payable to a person if, at the time when, or at any time after, the person becomes entitled to the grant or advance, the CEO of Austrade has formed the opinion, in accordance with guidelines determined under paragraph 101(1)(bb), that:
- (a) the person is not a fit and proper person to receive a grant; or
  - (b) the person has an associate who is not a fit and proper person to receive a grant.
- (2) Subsection (1) does not affect the validity of a payment of grant, or of an advance on account of grant, to the person at a time when the CEO of Austrade had not formed an opinion mentioned in that subsection.

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(3) In this section:

*associate* means a person who is determined to be an associate in accordance with the guidelines determined under paragraph 101(1)(bb).

#### **Subdivision 4—Meaning of under insolvency administration**

##### **87B When is an individual under insolvency administration?**

An individual is *under insolvency administration* only if:

- (a) the individual is in any of the following situations under the *Bankruptcy Act 1966*:
  - (i) the individual is a bankrupt in respect of a bankruptcy from which he or she has not been discharged;
  - (ii) property of the individual is subject to control under section 50 or Division 2 of Part X of that Act;
  - (iii) the individual has, in the previous 3 years, executed a personal insolvency agreement under Part X of that Act; or
- (b) the individual is in a situation of a kind referred to in paragraph (a) under the law of an external Territory or a foreign country.

Note: For *external Territory* and *foreign country* see sections 17 and 22 respectively of the *Acts Interpretation Act 1901*.

##### **87C When is a body corporate under insolvency administration?**

- (1) Subject to subsection (2), a body corporate is *under insolvency administration* only if:
  - (a) it is in any of the following situations under the Corporations Law:
    - (i) the body corporate is being wound up;
    - (ii) there is a receiver, receiver and manager, or other controller, of property of the body corporate who has functions or powers in connection with managing the body corporate;
    - (iii) the body corporate is under administration;
    - (iv) the body corporate has executed a deed of company arrangement that has not yet terminated;

- (v) the body corporate has entered into a compromise or arrangement with another person and the administration of the compromise or arrangement has not been concluded; or
- (b) the body corporate is in a situation of a kind referred to in paragraph (a) under the law of an external Territory or a foreign country.

Note: For *external Territory* and *foreign country* see sections 17 and 22 respectively of the *Acts Interpretation Act 1901*.

- (2) Despite subsection (1), a body corporate that, apart from this subsection, would be under insolvency administration is taken not to be under insolvency administration if there is in force a certificate given by the person administering the body corporate stating that the body corporate is able to pay all its debts as and when they become due and payable.

Note: For *person administering the body corporate* see subsection (3).

- (3) In subsection (2):

*person administering a body corporate* means whichever of the following has been appointed in relation to the body corporate:

- (a) the liquidator or provisional liquidator of the body corporate;
- (b) the receiver, receiver and manager, or other controller, of property of the body corporate;
- (c) the administrator of the body corporate;
- (d) the administrator of the deed of company arrangement executed by the body corporate;
- (e) the administrator of any compromise or arrangement into which the body corporate has entered;
- (f) a person exercising, under the law of an external Territory or a foreign country, the same functions and the same powers as a person referred to in one of paragraphs (a) to (e).

## **Part 8—Miscellaneous**

### **Division 1—Approved bodies and approved joint ventures**

#### **88 Applications for approval**

- (1) Any of the following:
  - (a) a body corporate established for a public purpose by or under an Australian law;
  - (b) a co-operative;
  - (c) a body corporate that represents the interests of:
    - (i) one or more industries, to the extent that those industries operate at a national, State/Territory or regional level; or
    - (ii) a substantial part of an industry, to the extent that the part of the industry operates at a national, State/Territory or regional level;may apply to the CEO of Austrade for approval as an approved body.
- (2) A group of persons may apply to the CEO of Austrade for approval as a joint venture.
- (4) The application must be in writing and in accordance with a form approved by the CEO of Austrade.

#### **89 Approval**

- (1) Subject to section 92, the CEO of Austrade must deal with the application in accordance with the regulations.
- (2) A decision of the CEO of Austrade to approve, or not to approve, the applicant must be in writing.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power conferred on a person to make an instrument (such as a written approval) includes the power to cancel or vary the instrument.
- (3) Subject to subsections (4) and (5), an approval must specify the conditions (if any) to which the approval is subject.

- (4) An approval of a group of persons as a joint venture must:
- (a) specify the activity, project or purpose for which the group is approved; and
  - (b) specify the member of the group who is the nominated contact member for the purposes of applications and payments of grant.

Only a resident of Australia may be specified as a nominated contact member.

Note: The powers of the CEO of Austrade under this section are subject to guidelines (see section 101).

## **90 When approval takes effect and expires**

- (1) An approval takes effect:
- (a) on the day specified in the approval; or
  - (b) if no day is specified—on the day on which the approval is given.

The day specified under paragraph (a) may be earlier than the day on which the approval is given.

- (2) An approval expires immediately before the beginning of the fifth anniversary of the day on which the approval took effect.

## **91 Procedure for cancellation of approval**

- (1) If the CEO of Austrade is of the opinion that there may be grounds for cancelling the approval of a person as an approved body, or the approval of a group of persons as a joint venture, the CEO must:
- (a) give to the person, or in the case of an approved joint venture, to the nominated contact member, written notice of the CEO's opinion specifying the reasons for that opinion; and
  - (b) invite the person or member to make a written submission to the CEO in relation to the matter within a reasonable period specified in the notice.
- (2) In deciding whether to cancel the approval, the CEO of Austrade must take into consideration the matters raised in any submission received within the period specified in the notice.

Note: The powers of the CEO of Austrade under this section are subject to guidelines (see section 101).

**92 Limit on number of approved joint ventures of which person may be a member**

- (1) The Minister may, by legislative instrument, make a determination fixing the maximum number of approved joint ventures of which a person may be a member.
- (4) The CEO of Austrade must not:
  - (a) approve a group of persons as a joint venture; or
  - (b) vary a group's approval as a joint venture;if the approval or variation would result in a person contravening subsection (1).

## **Division 2—Effect of change in ownership of business etc.**

### **93 Object of Division**

- (1) Broadly, the underlying principles of this Division are:
  - (a) that the rules relating to grants that are payable in respect of a business (including the limitation on the number of grants that are payable) continue to apply; and
  - (b) that a particular grant is still payable in respect of a business; despite a change in who carries on the business.
- (2) To achieve this, this Division requires the CEO of Austrade to treat certain particulars of the previous owner of the business as being those of the new owner.

### **94 Change in ownership of business etc.**

- (1) Subsection (2) applies if:
  - (a) at any time, a person (the *previous owner*) carried on a particular business (the *old business*) in Australia; and
  - (b) at a later time, another person (the *new owner*) carries on:
    - (i) the business or a part of the business (the *relevant part*); or
    - (ii) a business (the *new business*) that, at that time, is similar to the old business, or a part of the old business (the *relevant part*), carried on by the previous owner before that time, to such an extent that the CEO of Austrade is satisfied that the new business should be treated as a continuation of the old business; and
  - (c) the new owner applies for a grant in respect of a grant year.

Note: Decisions whether 2 businesses are similar are subject to guidelines determined by the Minister under section 101.

- (2) For the purposes of this Act, the CEO of Austrade must treat particulars of the previous owner as being those of the applicant in the following ways:
  - (a) any eligible expenses incurred by the previous owner in the capacity of owner of the business (or of the relevant part) are to be treated as having been incurred by the new owner;

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- (b) if the CEO had decided that the previous owner met the grants entry requirements—the new owner is to be treated as if the CEO had decided that it had met the grants entry requirements;
- (c) any grant, or advance on account of grant, paid or payable (whether under this Act or under the repealed Act) to the previous owner in the capacity of owner of the business (or of the relevant part) is to be treated as having been paid, or as being payable, to the new owner;
- (d) any other aspect of the business (or of the relevant part) is to be treated as if it had been carried on by the new owner.

Note: For *eligible expenses*, *repealed Act* and *grants entry requirements* see section 107.

## **Division 3—Power to adjust expenses and provisional grant amounts**

### **95 Object of Division**

This Division empowers the CEO of Austrade to adjust an applicant's eligible expenses or provisional grant amount in certain circumstances (such as if the expenses are unreasonable or have been generated by an artificial arrangement).

### **96 Adjustments that may be made by the CEO of Austrade**

- (1) This section applies if it appears to the CEO of Austrade that:
  - (a) any expenses incurred by an applicant in respect of an eligible promotional activity:
    - (i) may not have been properly substantiated; or
    - (ii) may not be reasonable, commercial or bona fide; or
  - (b) an applicant for a grant in respect of a grant year has done, or been party to, any act or thing (such as making an agreement or payment, forming a company or allocating income or expenses between different persons or different years) for the sole or dominant purpose of obtaining a grant, or an increase in the amount of a grant, in respect of that year.
- (2) If this section applies, the CEO of Austrade must:
  - (a) notify the applicant, in writing, that the CEO is of that opinion and of the CEO's reasons for being of that opinion; and
  - (b) ask the applicant to explain, within the period specified in the notice, why the CEO should not adjust the applicant's expenses under this section.
- (3) If, after the end of the period, the CEO of Austrade is not satisfied with the applicant's explanation, the CEO may:
  - (a) make any adjustments that he or she thinks necessary to the amount that (apart from this section and section 30) would be the applicant's eligible expenses; and
  - (b) work out the amount that is the applicant's provisional grant amount for the grant year because of section 64.

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- (4) In making a decision under subsection (3), the CEO of Austrade must take into consideration any information given by the applicant in answer to the CEO's request under paragraph (2)(b).

## **Division 4—Review of decisions**

### **97 Reviewable decisions**

- (1) Each of the following decisions of the CEO of Austrade is a *reviewable decision*:
- (aa) a decision under section 9 that a person did not meet the Australian net benefit requirements in relation to a grant year;
  - (a) a decision under section 20 that a person did not meet the grants entry requirements;
  - (b) a decision under Part 4 relating to eligible products;
  - (ba) a decision under an instrument in force under paragraph 63(3)(f);
  - (c) any decision relating to an application for a grant;
  - (ca) any decision under section 87AA;
  - (d) a decision under Division 1 to refuse an application for approval as an approved body or to vary or cancel such an approval;
  - (f) a decision under Division 1 to refuse a group's application for approval as a joint venture or to vary or cancel such an approval;
  - (g) a decision under subsection 89(3) to specify one or more conditions to which a person's approval as an approved body is subject;
  - (i) a decision under subsection 89(3) to specify one or more conditions to which a group's approval as a joint venture is subject;
  - (j) a decision under a scheme determined under section 100 to refuse to accredit an export market development grants consultant or to vary or cancel such an accreditation;
  - (k) a decision under that scheme to impose conditions on the accreditation of an export market development grants consultant or to vary those conditions.
- (2) Paragraph (1)(ca) does not, by implication, affect the operation of subsection (1) in relation to other decisions made under Subdivision 3 of Division 3 of Part 7.

### **98 Reconsideration of reviewable decisions**

- (1) A person who is affected by a reviewable decision may, if dissatisfied with the decision, request the CEO of Austrade to reconsider it.
- (2) The request must be made by written notice received by the CEO of Austrade:
  - (a) within the period of 30 days after the day on which the person first receives notice of the decision; or
  - (b) within such further period as the CEO allows.
- (3) The notice must set out the reasons for making the request.
- (4) After receiving the request, the CEO of Austrade must reconsider the decision and may confirm or vary the decision in such manner as the CEO thinks fit.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires applicants to be notified of their review rights.

### **99 AAT review of decisions of CEO of Austrade**

An application may be made to the Administrative Appeals Tribunal for the review of a decision of the CEO of Austrade that has been confirmed or varied under subsection 98(4).

## **Division 5—Accreditation of export market development grants consultants**

### **100 Accreditation of export market development grants consultants**

- (1) The CEO of Austrade may, by legislative instrument, determine a scheme for the accreditation of export market development grants consultants.

Note: For *export market development grants consultant* see section 107.

- (2) The scheme may empower the CEO of Austrade to make decisions:
- (a) accrediting export market development grants consultants; and
  - (aa) imposing conditions on the accreditation of export market development grants consultants or varying or removing those conditions; and
  - (b) varying or cancelling the accreditation of export market development grants consultants.
- (3) The scheme may make provision relating to the keeping by the CEO of Austrade of a register of export market development grants consultants accredited under the scheme. In particular, the scheme may provide for the following:
- (a) the keeping of the register in such form and manner as the CEO directs;
  - (b) the inspection of the register;
  - (c) the provision of information contained in the register;
  - (d) the fees to be charged by the CEO for such an inspection or for providing such information.

## Division 6—Guidelines

### 101 Guidelines

- (1) The Minister must determine, by legislative instrument:
  - (a) guidelines to be complied with by the CEO of Austrade in forming, for the purposes of paragraph 7(1)(a) or (4)(aa), an opinion whether a person is genuinely carrying on business in Australia; and
  - (b) guidelines to be complied with by the CEO in forming, for the purposes of paragraph 25A(1)(c), an opinion whether an events promoter is, or is not, closely related to an event holder and, for the purposes of Part 5, an opinion whether a person is, or is not, closely related to an applicant; and
  - (ba) guidelines to be complied with by the CEO in determining, for the purposes of paragraphs 24(a) and 37(1)(b) and subparagraphs 37(1)(c)(i) and (g)(i), whether goods are made in Australia; and
  - (baa) guidelines to be complied with by the CEO in determining, for the purposes of paragraph 24(b), whether Australia will derive a significant net benefit from the sale of goods outside Australia; and
  - (bb) guidelines to be complied with by the CEO:
    - (i) in determining who is an associate of a person for the purposes of subsection 87AA(1); and
    - (ii) in forming, for the purposes of subsection 87AA(1), an opinion whether a person or any such associate of the person is a fit and proper person to receive a grant;
  - (c) guidelines for the exercise by the CEO of his or her powers under Division 1 relating to the following:
    - (i) the approval of a person as an approved body;
    - (ii) the approval of a group of persons as a joint venture;
    - (iii) the variation and cancellation of those approvals; and
  - (d) guidelines to be complied with by the CEO in determining, for the purposes of subparagraph 94(1)(b)(ii), whether a business or a part of a business (the *old business*) that was carried on by a person is similar to a business (the *new business*) being carried on by another person to such an

extent that the new business should be treated as a continuation of the old business.

- (2) The Minister may determine, by legislative instrument, guidelines to be applied by the CEO of Austrade for the exercise by the CEO of any of his or her other powers or functions under this Act.
- (3) The CEO of Austrade must comply with the relevant guidelines (if any) determined under this section in exercising any of his or her powers or functions under this Act.

## **Division 8—Repayment of grant etc.**

### **103 Repayment of grant etc.—conviction**

- (1) This section applies if:
  - (a) a person is convicted of an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 or 137.2 of the *Criminal Code*; and
  - (b) the offence relates to an application by the person, or by an applicant of whom the person is an associate, for a grant in respect of a grant year.
- (2) If the grant, or an advance on account of the grant, has been paid by the CEO of Austrade, the applicant for the grant must repay the amount of the grant or of the advance to the CEO.
- (3) An amount that is repayable by the applicant to the CEO of Austrade under subsection (2), is a debt due to the Commonwealth and may be:
  - (a) deducted from any amount payable to the applicant under this Act; or
  - (b) recovered by the Commonwealth from the applicant in a court of competent jurisdiction.

Note: For *associate* see section 107.

### **104 Repayment of grant etc.—making of false statement etc.**

- (1) This section applies if a grant, or an advance on account of a grant, has been paid by the CEO of Austrade to an applicant because of:
  - (a) the making of a statement that was false or misleading; or
  - (b) the use of a book, record or document that contained information that was false or misleading.
- (2) The applicant is liable to repay to the CEO of Austrade the amount of the grant or of the advance.

- (3) An amount that is repayable by the applicant to the CEO of Austrade under subsection (2), is a debt due to the Commonwealth and may be:
  - (a) deducted from any amount payable to the applicant under this Act; or
  - (b) recovered by the Commonwealth from the applicant in a court of competent jurisdiction.
- (4) For the purposes of subsection (1), a certificate purporting to be signed by the CEO of Austrade, or by a person acting as the CEO of Austrade, that states that an amount of grant has been paid because of a reason referred to in paragraph (1)(a) or (b), is, upon its mere production, receivable as prima facie evidence of that fact.

## Division 9—General

### 105 Administration costs

The costs of the administration of this Act:

- (a) are to be paid out of the money (*appropriation amount*) appropriated by the Parliament for the purpose of meeting payments under this Act; and
- (b) must not exceed in any financial year 5% of the appropriation amount for the financial year.

### 106 Regulations

- (1) The Governor-General may make regulations:
  - (a) prescribing matters required or permitted by this Act to be prescribed; or
  - (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
  - (a) provide for the procedure to be followed by the CEO of Austrade for the approval of joint ventures and approved bodies; and
  - (b) require persons to make statutory declarations verifying:
    - (i) applications; and
    - (ii) documents, books or records used for the purposes of this Act.

### 106A Review of the scheme

- (1) Not later than 1 January 2015, the Minister must cause a person or body (other than the person or body that administers the export market development grants scheme) to conduct a review of the scheme for the purpose of making recommendations about the continuation of the scheme.
- (2) In conducting the review, submissions from the public must be called for and public hearings may be conducted.

- (3) The review must be completed, and a written report provided to the Minister, by a date determined by the Minister that is not later than 30 June 2015.
- (4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days after receiving it.

## Part 9—Interpretation

### 107 Definitions

- (1) In this Act, unless the contrary intention appears:

*ABN* has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

*approved activity, project or purpose*, in relation to an approved joint venture, means the activity, project or purpose for which the joint venture is approved under section 89.

*approved body* means any body corporate, co-operative or association that is approved by the CEO of Austrade as an approved body under section 89.

*approved joint venture* means a group of persons that is approved by the CEO of Austrade as a joint venture under section 89.

*approved promotional purpose* has the meaning given by Subdivision 3 of Division 2 of Part 5.

*associate* means:

- (a) in relation to a company—a director of the company; or
- (b) in relation to an association or a co-operative—a member of the body (however described) that governs, manages, or conducts the affairs of, the association or co-operative; or
- (c) in relation to a body corporate referred to in paragraph 6(1)(g):
  - (i) if subparagraph (ii) does not apply—a member of the body corporate; or
  - (ii) if another body is responsible for the management, or the conduct of the affairs, of the body corporate—a member of that body; or
- (d) in relation to a partnership:
  - (i) an individual, or a body corporate, that is a member of the partnership; or

- (ii) an individual who is a director of a company, or a member of any other body corporate, that is a member of the partnership; or
- (e) in relation to an approved joint venture:
  - (i) an individual, or a body corporate, that is a member of the joint venture; or
  - (ii) an individual, or a body corporate, that is a partner of a partnership that is a member of the joint venture; or
  - (iii) an individual who is a director of a company, or a member of any other body corporate, that is a member of the joint venture.

**association** means an association incorporated under an Australian law.

**Austrade** means the Australian Trade Commission established by section 7 of the *Australian Trade Commission Act 1985*.

**Australian law** means a law of the Commonwealth, of a State or of a Territory.

**Australian net benefit requirements** means the Australian net benefit requirements determined under section 10.

**balance distribution date**, in relation to a grant year, means the date determined by the Minister under section 68 to be the balance distribution date for that year.

**CEO of Austrade** means the Chief Executive Officer of Austrade referred to in section 7B of the *Australian Trade Commission Act 1985*.

**child**: without limiting who is a child of an individual for the purposes of this Act, someone is the **child** of an individual if he or she is a child of the individual within the meaning of the *Family Law Act 1975*.

**Classification Board** means the Classification Board established by the *Classification (Publications, Films and Computer Games) Act 1995*.

**commercial content service** has the same meaning as in Schedule 7 to the *Broadcasting Services Act 1992*.

**company** means a body incorporated under the *Corporations Act 2001*.

**computer game** has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995*.

**conviction** has a meaning affected by section 108.

**co-operative** means a co-operative incorporated under an Australian law.

**course** has the same meaning as in the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*.

**de facto partner** of an individual has the meaning given by the *Acts Interpretation Act 1901*.

**disposal**, in relation to intellectual property or know-how, includes sale, grant, assignment or supply.

Note: See also section 111.

**disqualifying conviction** has the meaning given by section 16.

**eligible event** has the meaning given by section 25A.

**eligible expenses** has the meaning given by Division 1 of Part 5.

**eligible goods** has the meaning given by section 24.

**eligible intellectual property** has the meaning given by section 26.

**eligible know-how** has the meaning given by section 27.

**eligible non-tourism service** has the meaning given by subsection 25(1).

**eligible products** means:

- (a) eligible goods; or
- (b) eligible services; or
- (ba) eligible events; or
- (c) eligible intellectual property; or
- (d) eligible know-how.

**eligible promotional activity** has the meaning given by subsection 33(1).

**eligible services** means:

- (a) eligible non-tourism services; or
- (c) eligible tourism services.

**eligible tourism service** has the meaning given by subsection 25(2).

**event** includes a conference, a meeting, a convention, an exhibition and a sporting, cultural or entertainment event.

**event holder**, in relation to an event, means the person holding the event.

**events promoter**, for an event, means a person that markets the event, under a written contract between the person and the event holder, to persons outside Australia.

**export** means export from Australia, but does not include the taking of goods out of Australia with the intention that the goods will at some later time be brought back to Australia to remain permanently in Australia.

**export market development grants consultant** means a person who asks for, or receives, any fee for any work relating to the preparation of an application for a grant.

**film** has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995*.

**grant** means a grant under this Act.

**grantee** means a person that has received, or is entitled to receive, a grant under this Act or under the repealed Act in respect of a grant year (other than a grant that must be disregarded because of subsection 8(1)).

**grants entry requirements** means the grants entry requirements determined under subsection 21(1).

**grant year** means:

- (a) a year commencing on 1 July during the period from the start of 1 July 1996 to the end of 30 June 2016; or

- (b) a grant year within the meaning of the repealed Act other than a year commencing on or after 1 July 1996.

**income**, in relation to a person, means:

- (a) any income of the person that:
- (i) is assessable income under the *Income Tax Assessment Act 1936*; or
  - (ii) if that Act does not apply to the person—would be assessable income under that Act if it applied to the person; or
- (b) any money (other than income referred to in paragraph (a)) that the person receives by way of financial assistance from:
- (i) the Commonwealth, a State or a Territory; or
  - (ii) a body established by or under an Australian law; or
- (c) if the person is a body corporate referred to in paragraph 6(1)(g)—any payment to the body from money appropriated by the Parliament of the Commonwealth, of a State or of a Territory for the purposes of the body.

**initial payment ceiling amount**, in relation to a grant year, means the amount determined by the Minister under section 68 to be the initial payment ceiling amount for that grant year.

**intellectual property** does not include rights relating to know-how.

**nominated contact member**, in relation to an approved joint venture, means the member who is specified in the joint venture's approval as being the nominated contact member.

**non-tourism service** means a service other than:

- (a) a tourism service; or
- (b) a service specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

**overseas student** has the same meaning as in the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*.

**parent**: without limiting who is a parent of an individual for the purposes of this Act, someone is the **parent** of an individual if the individual is his or her child because of the definition of **child** in this section.

**partnership** means a partnership that is regulated in accordance with the law of a State or Territory.

Note: See also section 112.

**payout factor**, in relation to a grant year, means the factor determined by the CEO of Austrade under section 69 in respect of that grant year.

**person** includes a partnership and an approved joint venture.

Note: This definition widens the ordinary meaning of **person** which, under section 22 of the *Acts Interpretation Act 1901*, includes a body politic or corporate as well as an individual.

**potential prohibited content** has the same meaning as in Schedule 7 to the *Broadcasting Services Act 1992*.

**prohibited content** has the same meaning as in Schedule 7 to the *Broadcasting Services Act 1992*.

**provisional grant amount** has the meaning given by Division 2 of Part 6.

**publication** has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995*.

**registered provider** has the same meaning as in the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*.

**related company**, in relation to a body corporate that has applied for a grant in respect of a grant year, means a body corporate that is related (within the meaning of section 50 of the *Corporations Act 2001*) to the first body corporate as at 30 June in the grant year.

**related company group** means a group of related companies.

**relative**, in relation to an individual, means:

- (a) a spouse of the individual; or
- (b) any individual who is, or is a spouse of, a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that individual.

**repealed Act** means the *Export Market Development Grants Act 1974*.

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*resident of Australia* has the meaning given by section 114.

*sale* has a meaning affected by section 109.

*spouse* includes a de facto partner.

*supply* means supply for consideration.

*telephone sex service* has the meaning given by section 158J of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

*Territory* means an internal Territory.

*tourism service* means a service prescribed for the purposes of this definition.

*under insolvency administration* has the meaning given by sections 87B and 87C.

- (2) For the purposes of paragraph (b) of the definition of *relative* in subsection (1), relationships to an individual may also be traced to or through another individual who is:
- (a) a de facto partner of the first individual; or
  - (b) an exnuptial or adoptive child of the first individual; or
  - (c) related to the first individual because of the definitions of *child* and *parent* in this section.

## 108 Conviction

A reference in this Act to a *conviction* of a person for an offence includes:

- (a) a reference to a conviction recorded before the commencement of this Act; and
  - (b) a reference to the making (whether before or after the commencement of this Act) of an order under:
    - (i) section 19B of the *Crimes Act 1914*; or
    - (ii) a corresponding provision of another Australian law or of a law of a foreign country;
- in relation to the person in respect of an offence.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person guilty of an offence to take action without proceeding to record a conviction.

**109 Sale of eligible goods**

A person is taken to *sell* eligible goods only if the CEO of Austrade is satisfied that the property in the goods passes from that person to a person that is not a resident of Australia at the time when the goods are sold.

**111 Disposal of eligible intellectual property or eligible know-how**

A person is taken to *dispose of eligible intellectual property or eligible know-how* only if the CEO of Austrade is satisfied that the property or know-how (as the case may be) is disposed of for reward to a person that is not a resident of Australia for use or enjoyment outside Australia.

**112 When joint venture taken to be a partnership**

A joint venture is taken to be a partnership only if the agreement establishing the joint venture is effective to establish a partnership between the parties to the joint venture under the law relating to partnerships in the place where the agreement is made.

**114 Resident of Australia**

For the purposes of this Act, each of the following is a *resident of Australia*:

- (a) an individual:
  - (i) whose principal place of residence is in Australia; and
  - (ii) who intends to remain permanently in Australia;
- (b) a company;
- (c) a partnership, co-operative or association;
- (d) a body corporate established by an Australian law for a public purpose;
- (e) the Commonwealth, a State or Territory.

Note: For *company, partnership, co-operative, association, Australian law* and *Territory* see section 107.



**Table of Acts****Notes to the *Export Market Development Grants Act 1997*****Note 1**

The *Export Market Development Grants Act 1997* as shown in this compilation comprises Act No. 57, 1997 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001 and the *Australian Trade Commission Legislation Amendment Act 2006*, see Act No. 56, 2006.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Export Market Development Grants Act 1997</i>	57, 1997	30 April 1997	1 July 1997	
<i>Export Market Development Grants Legislation Amendment Act 1999</i>	100, 1999	16 July 1999	16 July 1999	Sch. 1 (items 12, 24, 26, 33)
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 179–183): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (a)	Ss. 4–14 [see Note 1]
<i>Export Market Development Grants Amendment Act 2001</i>	60, 2001	28 June 2001	Schedule 1 (items 4–67): 1 July 2001 Remainder: Royal Assent	Sch. 1 (items 68–70)
<i>Export Market Development Grants Amendment Act 2002</i>	47, 2002	29 June 2002	29 June 2002	Sch. 1 (item 2)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Export Market Development Grants Amendment Act 2003</i>	58, 2003	30 June 2003	30 June 2003	Sch. 1 (item 24)
<i>Export Market Development Grants Amendment Act 2004</i>	71, 2004	23 June 2004	23 June 2004	—
<i>Bankruptcy Legislation Amendment Act 2004</i>	80, 2004	23 June 2004	Schedule 1 (items 196, 212, 213, 215): 1 Dec 2004 (see <i>Gazette</i> 2004, No. GN34)	Sch. 1 (items 212, 213, 215)
<i>Australian Trade Commission Legislation Amendment Act 2006</i>	56, 2006	21 June 2006	Schedule 2 (items 1–145): 1 July 2006	Sch. 4 [see Note 1]
<i>Export Market Development Grants Legislation Amendment Act 2006</i>	57, 2006	21 June 2006	Schedule 1 (items 1–33, 35–55): Royal Assent Schedule 1 (item 34): (b)	Sch. 1 (item 55)
<i>Statute Law Revision Act 2007</i>	8, 2007	15 Mar 2007	Schedule 1 (items 5–7): (c) Schedule 1 (item 8) and Schedule 4 (items 14, 15): Royal Assent	—
<i>Communications Legislation Amendment (Content Services) Act 2007</i>	124, 2007	20 July 2007	Schedule 1 (items 82–88, 105): 20 Jan 2008	Sch. 1 (item 105)
<i>Export Market Development Grants Amendment Act 2008</i>	33, 2008	23 June 2008	23 June 2008	Sch. 1 (item 57)
<b>as amended by</b>				
<i>Statute Law Revision Act 2010</i>	8, 2010	1 Mar 2010	Schedule 2 (item 5): (d)	—
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008</i>	144, 2008	9 Dec 2008	Schedule 8 (items 2–13): 10 Dec 2008	Sch. 8 (item 13)
<i>Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010</i>	4, 2010	19 Feb 2010	Schedule 11 (items 9, 10): 20 Feb 2010	—
<i>Export Market Development Grants Amendment Act 2010</i>	86, 2010	29 June 2010	30 June 2010	Sch. 1 (items 35, 43)

**Act Notes**

- (a) The *Export Market Development Grants Act 1997* was amended by Schedule 3 (items 179–183) only of the *Corporations (Repeals, Consequential and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (b) Subsection 2(1) (item 3) of the *Export Market Development Grants Legislation Amendment Act 2006* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 1, item 34	Immediately after the commencement of item 19 of Schedule 1 to the <i>Export Market Development Grants Legislation Amendment Act 1999</i> .	16 July 1999

- (c) Subsection 2(1) (items 6 and 7) of the *Statute Law Revision Act 2007* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Schedule 1, items 5 and 6	Immediately after the commencement of item 1 of Schedule 1 to the <i>Corporate Law Economic Reform Program Act 1999</i> .	13 March 2000
7. Schedule 1, item 7	Immediately after the commencement of item 42 of Schedule 1 to the <i>Export Market Development Grants Legislation Amendment Act 2006</i> .	21 June 2006

- (d) Subsection 2(1) (item 8) of the *Statute Law Revision Act 2010* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
8. Schedule 2, item 5	Immediately after the time specified in the <i>Export Market Development Grants Amendment Act 2008</i> for the commencement of items 54 and 55 of Schedule 1 to that Act.	23 June 2008



**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Reader's Guide .....	am. No. 60, 2001; No. 58, 2003; No. 71, 2004; Nos. 56 and 57, 2006; No. 33, 2008
List of terms.....	am. No. 58, 2003; Nos. 56 and 57, 2006; No. 33, 2008 (as am. by No. 8, 2010); No. 144, 2008
<b>Part 3</b>	
<b>Division 1</b>	
S. 6.....	am. No. 55, 2001; No. 56, 2006; No. 86, 2010
Note to s. 6(2) .....	am. No. 56, 2006
Subhead. to s. 7(1).....	am. No. 86, 2010
S. 7.....	am. No. 100, 1999; No. 60, 2001; No. 58, 2003; No. 56, 2006; No. 33, 2008; No. 86, 2010
Note to s. 7(1) .....	am. No. 100, 1999; No. 60, 2001; No. 58, 2003; No. 56, 2006; No. 33, 2008
Note to s. 7(2) .....	am. No. 60, 2001; No. 58, 2003; No. 56, 2006; No. 33, 2008
Note to s. 7(4) .....	am. No. 100, 1999; No. 60, 2001; No. 58, 2003; No. 56, 2006; No. 33, 2008
Heading to s. 8 .....	am. No. 100, 1999
S. 8.....	am. No. 100, 1999; No. 58, 2003
<b>Division 2</b>	
Div. 2 of Part 3 .....	rep. No. 57, 2006 ad. No. 33, 2008
S. 9.....	rep. No. 57, 2006 ad. No. 33, 2008 am. No. 86, 2010
S. 10.....	am. No. 60, 2001; No. 58, 2003 rep. No. 57, 2006 ad. No. 33, 2008
S. 11 .....	am. No. 58, 2003 rep. No. 57, 2006
S. 12.....	rep. No. 57, 2006
Div. 3 of Part 3 .....	rep. No. 60, 2001
Ss. 13–15 .....	rep. No. 60, 2001
<b>Division 4</b>	
S. 16.....	am. No. 137, 2000; No. 55, 2001; No. 8, 2007; Nos. 4 and 86, 2010
<b>Division 5</b>	
Heading to Div. 5 of Part 3 .....	rs. No. 100, 1999; No. 60, 2001
S. 18.....	am. No. 60, 2001; No. 86, 2010
S. 19.....	rep. No. 60, 2001
Heading to s. 20 .....	am. No. 56, 2006
S. 20.....	rs. No. 100, 1999 am. No. 60, 2001; No. 56, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 21 .....	rs. No. 100, 1999 am. Nos. 56 and 57, 2006
Heading to s. 22 .....	am. No. 56, 2006
S. 22 .....	rs. No. 100, 1999 am. No. 60, 2001; No. 56, 2006
<b>Part 4</b>	
S. 23 .....	am. No. 60, 2001
S. 24 .....	rs. No. 57, 2006 am. No. 56, 2006
Note to s. 24 .....	am. No. 56, 2006
S. 25 .....	am. No. 60, 2001; Nos. 56 and 57, 2006; No. 33, 2008
Note to s. 25(2) .....	am. No. 57, 2006
S. 25A .....	ad. No. 60, 2001 am. No. 56, 2006
Note 2 to s. 25A(1) .....	am. No. 56, 2006
Ss. 26, 27 .....	am. No. 56, 2006
<b>Part 5</b>	
<b>Division 1</b>	
S. 29 .....	am. No. 60, 2001; No. 33, 2008; No. 86, 2010
Heading to s. 30 .....	am. No. 56, 2006
S. 30 .....	am. No. 56, 2006
<b>Division 2</b>	
<b>Subdivision 1</b>	
S. 32 .....	am. No. 60, 2001
<b>Subdivision 2</b>	
S. 33 .....	am. No. 100, 1999; No. 60, 2001; Nos. 56 and 57, 2006; No. 33, 2008; No. 86, 2010
Note 1 to s. 33(2) .....	am. No. 57, 2006; No. 33, 2008
Note 2 to s. 33(2) .....	am. No. 56, 2006
Note 3 to s. 33(2) .....	ad. No. 57, 2006 am. No. 56, 2006
S. 34 .....	am. No. 100, 1999; No. 60, 2001; No. 57, 2006
S. 34A .....	ad. No. 60, 2001
S. 35 .....	rep. No. 57, 2006
<b>Subdivision 3</b>	
S. 37 .....	am. No. 60, 2001; Nos. 56 and 57, 2006; No. 86, 2010
Note to s. 37(1) .....	rep. No. 57, 2006
Note 1 to s. 37(1) .....	ad. No. 57, 2006
Note 2 to s. 37(1) .....	ad. No. 57, 2006 am. No. 56, 2006
S. 38 .....	am. No. 86, 2010
<b>Subdivision 4</b>	
S. 40 .....	am. No. 60, 2001; No. 58, 2003; No. 57, 2006; No. 124, 2007; No. 86, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 41 .....	am. No. 33, 2008
S. 44 .....	am. No. 57, 2006
S. 45 .....	am. No. 56, 2006
S. 46 .....	am. No. 60, 2001
S. 47 .....	am. No. 56, 2006
S. 49 .....	am. No. 57, 2006
S. 50 .....	rep. No. 58, 2003
S. 51 .....	rep. No. 86, 2010
S. 52 .....	am. No. 56, 2006 rep. No. 86, 2010
Note to s. 52(1) .....	am. No. 56, 2006 rep. No. 86, 2010
S. 53 .....	am. No. 58, 2003; No. 86, 2010
S. 55 .....	rep. No. 57, 2006
S. 56A .....	ad. No. 57, 2006
S. 57 .....	rs. No. 60, 2001 am. No. 56, 2006
Heading to s. 57A .....	am. No. 124, 2007
S. 57A .....	ad. No. 60, 2001 am. No. 124, 2007
Note to s. 57A .....	am. No. 124, 2007
S. 57B .....	ad. No. 60, 2001
<b>Division 3</b>	
S. 59 .....	am. No. 56, 2006
<b>Part 6</b>	
<b>Division 1</b>	
S. 61 .....	am. No. 100, 1999; No. 56, 2006
<b>Division 2</b>	
S. 62 .....	am. No. 57, 2006
S. 63 .....	am. No. 60, 2001; No. 47, 2002; No. 58, 2003; No. 57, 2006; No. 33, 2008; No. 86, 2010
Heading to s. 64 .....	am. No. 56, 2006
S. 64 .....	rs. No. 100, 1999; No. 57, 2006 am. No. 56, 2006
S. 65 .....	am. No. 86, 2010
<b>Division 4</b>	
S. 68 .....	am. No. 100, 1999
S. 69 .....	am. No. 56, 2006
<b>Part 7</b>	
<b>Division 1</b>	
S. 70 .....	am. No. 56, 2006; No. 33, 2008; No. 86, 2010
Heading to s. 71 .....	am. No. 56, 2006
S. 71 .....	am. No. 56, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 72 .....	am. No. 56, 2006
S. 72 .....	am. No. 71, 2004; Nos. 56 and 57, 2006
Heading to s. 73 .....	am. No. 56, 2006
S. 73 .....	am. No. 100, 1999; No. 56, 2006; No. 33, 2008
S. 73A .....	ad. No. 33, 2008
<b>Division 2</b>	
Ss. 74, 75 .....	am. No. 56, 2006
Heading to s. 76 .....	am. No. 56, 2006
S. 76 .....	am. No. 56, 2006
S. 78 .....	am. No. 137, 2000; No. 55, 2001; No. 8, 2007; Nos. 4 and 86, 2010
S. 79 .....	am. No. 56, 2006
<b>Division 3</b>	
<b>Subdivision 1</b>	
Heading to Subdiv. 1 of..... Div. 3 of Part 7	rs. No. 56, 2006
Heading to s. 80 .....	am. No. 56, 2006
S. 80 .....	am. No. 56, 2006
<b>Subdivision 2</b>	
Ss. 81–83 .....	am. No. 56, 2006
<b>Subdivision 3</b>	
S. 85A .....	ad. No. 60, 2001
Heading to s. 86 .....	am. No. 100, 1999
Heading to s. 87 .....	am. No. 100, 1999
Note to s. 87(2) .....	rs. No. 60, 2001
S. 87A .....	ad. No. 60, 2001
S. 87AA .....	ad. No. 71, 2004 am. No. 56, 2006
<b>Subdivision 4</b>	
Subdiv. 4 of Div. 3 of Part 7 .....	ad. No. 60, 2001
S. 87B .....	ad. No. 60, 2001 am. No. 80, 2004
S. 87C .....	ad. No. 60, 2001 am. No. 8, 2007
<b>Part 8</b>	
<b>Division 1</b>	
Heading to Div. 1 of Part 8 .....	rs. No. 86, 2010
S. 88 .....	am. No. 56, 2006; No. 33, 2008; No. 86, 2010
S. 89 .....	am. No. 56, 2006; No. 86, 2010
Note to s. 89(5) .....	am. No. 56, 2006
S. 90 .....	am. No. 57, 2006
S. 91 .....	am. No. 56, 2006; No. 86, 2010
Note to s. 91(2) .....	am. No. 56, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 92.....	am. Nos. 56 and 57, 2006
<b>Division 2</b>	
Div. 2 of Part 8 .....	rs. No. 57, 2006
S. 93.....	rs. No. 57, 2006 am. No. 56, 2006
S. 94.....	am. No. 100, 1999; No. 60, 2001 rs. No. 57, 2006 am. No. 56, 2006
Note to s. 94(1) .....	am. No. 56, 2006
Note to s. 94(3) .....	am. No. 100, 1999 rep. No. 57, 2006
<b>Division 3</b>	
Div. 3 of Part 8 .....	rs. No. 57, 2006
S. 95.....	rs. No. 57, 2006 am. No. 56, 2006
Heading to s 96 .....	am. No. 56, 2006
S. 96.....	am. No. 100, 1999 rs. No. 57, 2006 am. No. 56, 2006
<b>Division 4</b>	
S. 97.....	am. No. 100, 1999; No. 71, 2004; No. 56, 2006; No. 33, 2008; No. 86, 2010
S. 98.....	am. No. 56, 2006
Heading to s. 99.....	am. No. 56, 2006
S. 99.....	am. No. 56, 2006
<b>Division 5</b>	
S. 100.....	am. Nos. 56 and 57, 2006; No. 86, 2010
<b>Division 6</b>	
S. 101.....	am. No. 100, 1999; No. 60, 2001; No. 71, 2004; Nos. 56 and 57, 2006; No. 8, 2007; No. 86, 2010
S. 102.....	rep. No. 137, 2000
Heading to Div. 7 of Part 8.....	rep. No. 8, 2007
<b>Division 8</b>	
S. 103.....	am. No. 137, 2000; No. 56, 2006; No. 86, 2010
S. 104.....	am. No. 56, 2006
<b>Division 9</b>	
S. 105.....	am. No. 57, 2006
S. 106.....	am. No. 56, 2006; No. 86, 2010
S. 106A .....	ad. No. 100, 1999 am. No. 60, 2001; No. 57, 2006; No. 86, 2010
<b>Part 9</b>	
S. 107.....	am. No. 100, 1999; Nos. 55 and 60, 2001; No. 58, 2003; Nos. 56 and 57, 2006; No. 124, 2007; Nos. 33 and 144, 2008; No. 86, 2010
S. 109.....	am. No. 56, 2006

**Table of Amendments**

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

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Provision affected	How affected
S. 110.....	rep. No. 57, 2006
S. 111.....	am. No. 56, 2006
S. 113.....	am. No. 100, 1999 rep. No. 58, 2003

**Table A**

**Application, saving or transitional provisions**

*Export Market Development Grants Legislation Amendment Act 1999*  
(No. 100, 1999)

**Schedule 1**

**12 Application and saving provisions**

- (1) The amendment made by item 11 does not apply in relation to persons registered under section 19 of the *Export Market Development Grants Act 1997* before the commencement of this Act.
  - (2) A determination in force under section 21 of the *Export Market Development Grants Act 1997* immediately before the commencement of this Act also has effect as if it had been made under section 21 of that Act as amended by this Act.
- Note: Section 21 of the *Export Market Development Grants Act 1997* lets Austrade determine grants entry requirements. Before the commencement of this Act, that section let Austrade determine the requirements a person had to satisfy to pass the grants entry test.
- (3) Subitem (2) does not prevent the revocation or amendment of a determination.

**24 Saving provision**

A decision that was a reviewable decision for the purposes of the *Export Market Development Grants Act 1997* immediately before the commencement of this Act remains a reviewable decision for the purposes of that Act, despite the amendment of section 97 of that Act by this Act.

**26 Saving of guidelines**

- (1) Any guidelines that were determined under paragraph 101(1)(a) of the *Export Market Development Grants Act 1997* and were in force immediately before the amendment of that paragraph by this Act continue to have effect after that amendment as if they had been determined under that paragraph immediately after the amendment.

**Table A**

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- (2) To avoid doubt, the provisions of the *Acts Interpretation Act 1901* that apply in relation to guidelines because of subsection 101(4) do not apply again to guidelines continued in force by subitem (1) because of that subitem.

**33 Application of amendments made by this Schedule**

- (1) The amendments made by this Schedule apply for the purposes of determining eligibility for, and the amounts of, grants in respect of a grant year commencing on or after 1 July 1998.
- (2) However, subitem (1) does not apply in relation to amendments of the following provisions of the *Export Market Development Grants Act 1997*:
- (a) section 73;
  - (b) section 107 (definition of *grant year*).

---

*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No. 137, 2000)

**Schedule 2**

**418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

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*Export Market Development Grants Amendment Act 2001* (No. 60, 2001)

**Schedule 1**

**68 Application provision—Parts 2 to 8 and 12 to 14**

The amendments made by Parts 2 to 8 and 12 to 14 of this Schedule apply in relation to a grant year that commences on or after 1 July 2001.

**69 Application provision—Part 9**

The amendments made by Part 9 of this Schedule apply to expenses incurred on or after 1 July 2001.

**70 Application provision—Parts 10 and 11**

The amendments made by Parts 10 and 11 of this Schedule apply in relation to a grant, or an advance on account of a grant, in respect of a grant year that commences on or after 1 July 2001.

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**Table A**

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*Export Market Development Grants Amendment Act 2002* (No. 47, 2002)

**Schedule 1**

**2 Application provision**

The amendment made by item 1 applies, and is taken to have applied, in relation to a grant year that commences, or commenced, on or after 1 July 2001.

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*Export Market Development Grants Amendment Act 2003* (No. 58, 2003)

**Schedule 1**

**24 Application**

The amendments made by this Schedule apply, and are taken to have applied, in relation to a grant year that commences, or commenced, on or after 1 July 2003.

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*Bankruptcy Legislation Amendment Act 2004* (No. 80, 2004)

**Schedule 1**

**212 Transitional—pre-commencement deeds and compositions**

- (1) For the purposes of this item, if a deed of assignment or a deed of arrangement was executed by a debtor and a trustee under Part X of the *Bankruptcy Act 1966* before the commencement of this item, the deed is a ***pre-commencement deed***.
- (2) For the purposes of this item, if a composition was accepted before the commencement of this item by a special resolution of a meeting of creditors under section 204 of the *Bankruptcy Act 1966*, the composition is a ***pre-commencement composition***.
- (3) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:
  - (a) the *Bankruptcy Act 1966* and regulations under that Act; and
  - (b) the Acts amended by Part 2 of this Schedule;

continue to apply, in relation to:

- (c) a pre-commencement deed; and
- (d) a pre-commencement composition; and
- (e) any matter connected with, or arising out of:
  - (i) a pre-commencement deed; or
  - (ii) a pre-commencement composition;

as if those repeals had not happened and those amendments had not been made.

### 213 Transitional—pre-commencement authorities

- (1) For the purposes of this item, if:
- (a) an authority given by a debtor under section 188 of the *Bankruptcy Act 1966* became effective before the commencement of this item; and
  - (b) as at the commencement of this item, none of the following had happened:
    - (i) the execution by the debtor and the trustee of a deed of assignment under Part X of the *Bankruptcy Act 1966*;
    - (ii) the execution by the debtor and the trustee of a deed of arrangement under Part X of the *Bankruptcy Act 1966*;
    - (iii) the acceptance of a composition by a special resolution of a meeting of the debtor's creditors under section 204 of the *Bankruptcy Act 1966*;

the authority is a *pre-commencement authority*.

- (2) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:
- (a) the *Bankruptcy Act 1966* and regulations under that Act; and
  - (b) the Acts amended by Part 2 of this Schedule;

continue to apply, in relation to:

- (c) a pre-commencement authority; and
- (d) the control of the debtor's property following a pre-commencement authority becoming effective; and
- (e) a meeting of the debtor's creditors called under a pre-commencement authority; and
- (f) whichever of the following is applicable:
  - (i) a deed of assignment executed after the commencement of this item by the debtor and the trustee under Part X of

**Table A**

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- the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;
- (ii) a deed of arrangement executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;
  - (iii) a composition accepted after the commencement of this item by a special resolution of such a meeting; and
- (g) any other matter connected with, or arising out of:
- (i) a pre-commencement authority; or
  - (ii) a deed of assignment mentioned in subparagraph (f)(i); or
  - (iii) a deed of arrangement mentioned in subparagraph (f)(ii); or
  - (iv) a composition mentioned in subparagraph (f)(iii);

as if those repeals had not happened and those amendments had not been made.

**215 Transitional—regulations**

- (1) The regulations may make provision for matters of a transitional nature arising from the amendments made by Parts 1 and 2 of this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

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*Export Market Development Grants Legislation Amendment Act 2006*  
(No. 57, 2005)

**Schedule 1**

**55 Application of amendments**

- (1) The amendments made by this Schedule (other than items 35, 46 and 47) apply to grants in respect of a grant year commencing on or after 1 July 2006.
  - (2) The amendment made by item 35 applies to approvals given on or after the day on which this Act receives the Royal Assent.
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**Table A**

*Communications Legislation Amendment (Content Services) Act 2007*  
(No. 124, 2007)

**Schedule 1**

**105 Application of amendments—*Export Market Development Grants Act 1997***

The amendments of the *Export Market Development Grants Act 1997* made by this Schedule apply to expenses incurred after the commencement of this item.

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*Export Market Development Grants Amendment Act 2008* (No. 33, 2008)

**Schedule 1**

**57 Application of amendments**

The amendments of the *Export Market Development Grants Act 1997* made by this Schedule apply in relation to grants in respect of a grant year commencing on or after 1 July 2008.

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*Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* (No. 144, 2008)

**Schedule 8**

**13 Application**

The amendments of the *Export Market Development Grants Act 1997* made by this Schedule apply in relation to grants in respect of a grant year commencing on or after 1 July 2009.

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## **Table A**

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*Export Market Development Grants Amendment Act 2010* (No. 86, 2010)

### **Schedule 1**

#### **35 Application**

The amendments made by items 1 to 24 apply in relation to working out entitlements to grants under the *Export Market Development Grants Act 1997* in respect of a grant year commencing on or after 1 July 2010.

#### **43 Application**

- (1) The amendment made by item 36 applies in relation to working out eligibility for grants under the *Export Market Development Grants Act 1997* in respect of a grant year commencing on or after 1 July 2010, regardless of whether the conviction of the offence against section 137.1 or 137.2 of the *Criminal Code* occurred before, on or after the commencement of that item.
- (2) The amendment made by item 37 applies in relation to applications made on or after the commencement of that item.
- (3) The amendment made by item 39 applies in relation to the preparation of applications for grants under the *Export Market Development Grants Act 1997* in respect of a grant year commencing on or after 1 July 2010, regardless of whether the conviction of the offence against section 137.1 or 137.2 of the *Criminal Code* occurred before, on or after the commencement of that item.
- (4) The amendment made by item 42 applies in relation to grants or advances paid on or after the commencement of that item, regardless of whether the conviction of the offence against section 137.1 or 137.2 of the *Criminal Code* occurred before, on or after that commencement.