



Export Market Development Grants Amendment Act 2008

No. , 2008



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**An Act to amend the *Export Market Development
Grants Act 1997*, and for other purposes**

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An Act to amend the *Export Market Development Grants Act 1997*, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Export Market Development Grants Amendment Act 2008*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

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T T T T

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—General amendments

Australian Trade Commission Act 1985

1 At the end of subparagraph 8(a)(x)

Add “and”.

2 Paragraph 8(b)

Repeal the paragraph, substitute:

- (b) to do any other act or thing required or permitted by:
 - (i) this Act; or
 - (ii) any other Act; or
 - (iii) an instrument under an Act;
to be done by the CEO; and

Export Market Development Grants Act 1997

3 Paragraph 7(1)(c)

Omit “7”, substitute “8”.

4 Paragraph 7(1)(d)

Omit “\$30,000,000”, substitute “\$50,000,000”.

5 At the end of subsection 7(1)

Add:

; (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.

6 Subsection 7(1) (note)

After “*associate*”, insert “, *Australian net benefit requirements*”.

7 At the end of subsection 7(2)

Add:

; (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.

8 Subsection 7(2) (note)

After “*approved joint venture*,”, insert “*Australian net benefit requirements*,”.

9 Paragraph 7(4)(b)

Omit “7”, substitute “8”.

10 Paragraph 7(4)(c)

Omit “\$30,000,000”, substitute “\$50,000,000”.

11 At the end of subsection 7(4)

Add:

; (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.

12 Subsection 7(4) (note)

After “*associate*”, add “, *Australian net benefit requirements*”.

13 After Division 1 of Part 3

Insert:

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 neither an approved body nor an approved trading house; 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 neither an approved body nor an approved trading house; 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.

14 Subsection 25(1)

Repeal the subsection, substitute:

- (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.

15 Subsection 25(3)

Repeal the subsection.

16 Subsection 25(4)

Omit “(1), (2) or (3)”, substitute “(1) or (2)”.

17 Paragraph 25(4)(a)

Repeal the paragraph, substitute:

- (a) a particular non-tourism service; or

18 Paragraph 25(4)(b)

Omit “or”.

19 Paragraph 25(4)(c)

Repeal the paragraph.

20 Subsection 25(4)

Omit “eligible internal service,”, substitute “eligible non-tourism service or”.

21 Subsection 25(4)

Omit “or an eligible external service”

22 Paragraph 29(d)

Omit “\$15,000”, substitute “\$10,000”.

23 Subsection 33(2) (at the end of the table)

Add:

- | | | |
|---|---|---|
| 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 |
| 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 |

24 Subsection 33(2) (at the end of note 1)

Add “For *foreign country* see section 22 of the *Acts Interpretation Act 1901*.”.

25 Section 41

Before “Expenses”, insert “(1)”.

26 At the end of section 41

Add:

- (2) However, subsection (1) does not apply to expenses covered by item 8 or 9 of the table in section 33.

27 Subsection 63(1)

After “(2A)”, insert “, (3)”.

28 Subsection 63(1)

Omit “\$7,500”, substitute “\$5,000”.

29 After subsection 63(2A)

Insert:

(3) If:

- (a) the applicant is neither an approved body nor an approved trading house; 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), (2) or (2A) (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.

30 Paragraph 63(4)(b)

Omit “\$150,000”, substitute “\$200,000”.

31 Subsection 70(1)

Repeal the subsection, substitute:

- (1) A person may make an application to the CEO of Austrade for a grant in respect of a grant year.

32 After subsection 70(2)

Insert:

(2A) If:

- (a) an applicant is neither an approved body nor an approved trading house; 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 neither an approved body nor an approved trading house; 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 neither an approved body nor an approved trading house; 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.

33 At the end of section 73

Add:

- (3) The CEO of Austrade must not consider an application if the application breaches subsection 70(2A), (2B) or (2C).

34 At the end of Division 1 of Part 7

Add:

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).

35 Paragraph 88(1)(c)

Repeal the paragraph, substitute:

- (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;

36 Before paragraph 97(1)(a)

Insert:

- (aa) a decision under section 9 that a person did not meet the Australian net benefit requirements in relation to a grant year;

37 After paragraph 97(1)(b)

Insert:

- (ba) a decision under an instrument in force under paragraph 63(3)(f);

38 Section 107

Insert:

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

39 Section 107 (definition of *eligible external services*)

Repeal the definition.

40 Section 107 (definition of *eligible internal services*)

Repeal the definition.

41 Section 107

Insert:

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

42 Section 107 (paragraph (a) of the definition of *eligible services*)

Repeal the paragraph, substitute:

- (a) eligible non-tourism services; or

43 Section 107 (paragraph (b) of the definition of *eligible services*)

Repeal the paragraph.

44 Section 107 (definition of *external service*)

Repeal the definition.

45 Section 107 (definition of *internal service*)

Repeal the definition.

46 Section 107

Insert:

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*.

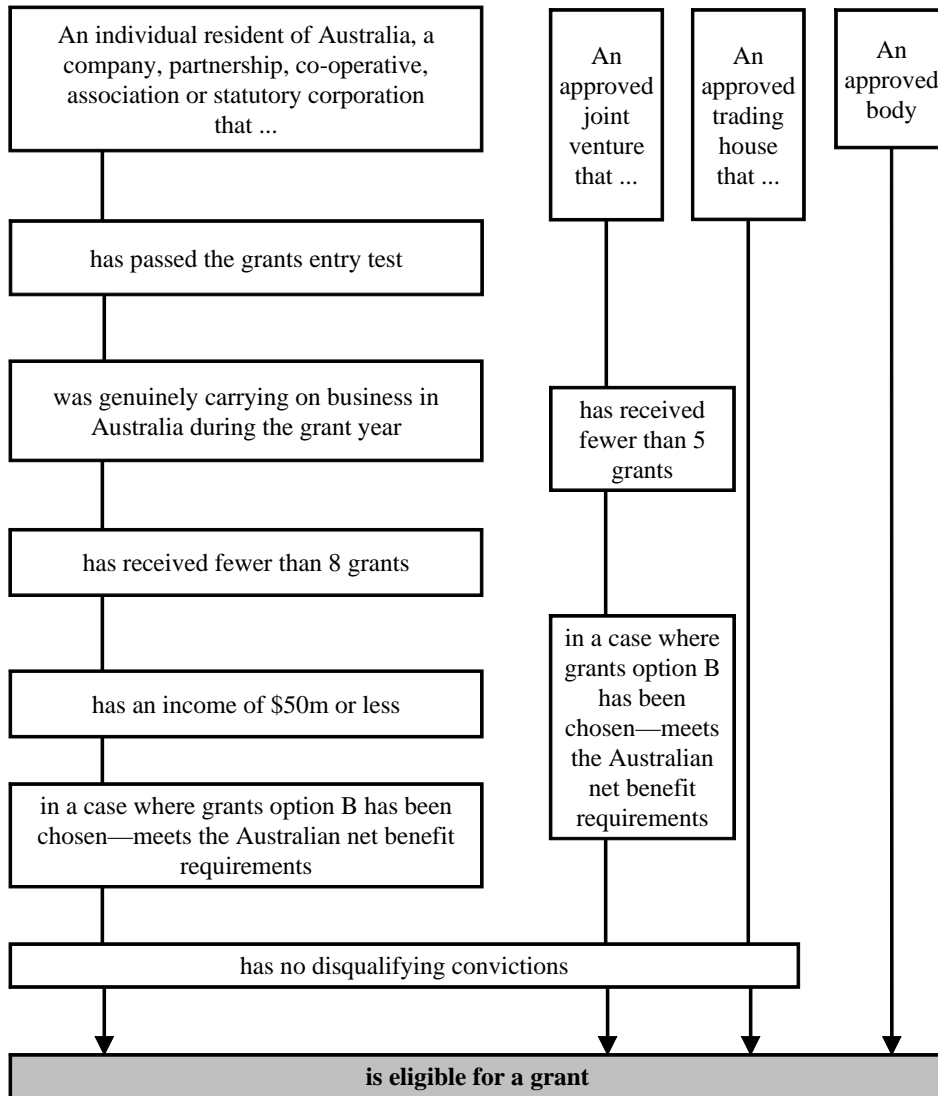
Part 2—Other amendments

Export Market Development Grants Act 1997

47 Readers guide (diagram 2)

Repeal the diagram, substitute:

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



48 Readers guide (table item 2 of diagram 3)

Repeal the item, substitute:

- 2 Non-tourism service supplied in or the CEO of Austrade is satisfied that

outside Australia to a non-resident Australia will derive a significant
net benefit from supply of the
service

49 Readers guide (table item 3 of diagram 3)

Repeal the item.

50 List of terms defined in Part 9

Insert the following entry in its appropriate alphabetical position
(determined on a letter-by-letter basis):

Australian net benefit requirements

51 List of terms defined in Part 9

Omit “eligible external services”.

52 List of terms defined in Part 9

Omit “eligible internal services”.

53 List of terms defined in Part 9

Insert the following entry in its appropriate alphabetical position
(determined on a letter-by-letter basis):

eligible non-tourism service

54 List of terms defined in Part 9

Omit “external services”.

55 List of terms defined in Part 9

Omit “internal services”.

56 List of terms defined in Part 9

Insert the following entry in its appropriate alphabetical position
(determined on a letter-by-letter basis):

non-tourism service

Part 3—Application of amendments

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.

I HEREBY CERTIFY that this Bill originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General
2008

(54/08)
