

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EXPORT MARKET DEVELOPMENT GRANTS  
AMENDMENT BILL 2008**

EXPLANATORY MEMORANDUM

(circulated by authority of the Minister for Trade, the Hon Simon Crean MP)

## **EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 2008**

### **OUTLINE**

1. This Bill amends the *Export Market Development Grants Act 1997* (the Act) to:
  - Increase the maximum grant by \$50,000 to \$200,000
  - Allow the expenses of (a) granting, registering or extending rights under foreign laws in relation to eligible intellectual property, and (b) the expenses of obtaining insurance against costs likely to be incurred to protect the rights, where these expenses are incurred for an approved promotional purpose in terms of the EMDG Act
  - Allow approved State /Territory or regional not-for-profit bodies representing industries, substantial parts of an industry or a number of industries, including tourism bodies, which promote Australian exporters, to access the scheme
  - Lift the maximum turnover limit from \$30 million to \$50 million
  - Cut the minimum threshold of expenditure by \$5,000 - to a \$10,000 minimum
  - Extend the limit on the number of grants from seven to eight annual grants
  - Replace the current list of eligible internal and external services with a new 'non-tourism services' category which will provide for all services supplied to foreign residents whether delivered inside or outside of Australia to be eligible unless specified in the EMDG Act Regulations
  - Introduce a performance measure for applicants that have already received two grants. Under these requirements, applicants claiming their third and subsequent EMDG grants (other than approved bodies and approved trading houses) must make a choice between two options. The two options provide alternative ways for applicants to show that they meet the performance requirements.

### **PURPOSE OF THE BILL**

2. Increase the maximum grant by \$50,000 to \$200,000

Under the current EMDG Act, all applicants except approved trading houses are entitled to receive up to \$150,000 per grant. It also provides for a \$250,000 ceiling for the combined grants payable for members of related companies groups.

This amendment Bill increases the maximum grant from \$150,000 to \$200,000. The current approved trading house maximum grant limit of \$500,000 and the \$250,000 ceiling for the combined grants payable for related company group members will not change.

3. Allow the expenses of (a) granting, registering or extending rights under foreign laws in relation to eligible intellectual property, and (b) the expenses of obtaining insurance against costs likely to be incurred to protect the rights, where these expenses are incurred for an approved promotional purpose in terms of the EMDG Act

This amendment Bill adds two new eligible expense categories to the range of eligible expenses (one for the expenses of granting, registering or extending rights under foreign laws in relation to eligible intellectual property and another for the expenses of obtaining insurance against costs likely to be incurred to protect the rights). The claimable expenses will be limited to reasonable expenses incurred by the applicant in payments to persons that were not closely related to the applicant, and must be for an approved promotional purpose.

4. Allow approved State /Territory or regional not-for-profit bodies representing industries, substantial parts of an industry or a number of industries, including tourism bodies, which promote Australian exporters, to access the scheme

The Act currently provides for bodies representing the interests of an industry or of a substantial part of an industry to be able to apply for approval as an approved body. This amendment Bill adds bodies which represent more than one industry and State/Territory or regional bodies to the range of bodies able to apply for approved body status under the Act.

This amendment to the Act will be followed by an amendment to the Ministerial guideline *Guidelines for the approval, variation of approval, and cancellation of approved bodies* to remove the requirement that approved bodies should be peak bodies representing the majority of businesses engaged in an industry.

5. Lift the maximum turnover limit from \$30 million to \$50 million

The Act currently provides for all EMDG applicants except approved bodies, approved joint ventures and approved trading houses to have annual income of \$30 million or less for the grant year. This amendment Bill increases the income ceiling of applicants from \$30 million to \$50 million. The Act's current provisions for approved bodies, approved joint ventures and approved trading houses will not change.

6. Cut the minimum threshold of expenditure by \$5,000 - to a \$10,000 minimum

The Act currently provides for a \$15,000 minimum expenses threshold. It also provides for all applicants to receive a minimum grant of \$5,000 and for first-time applicants to be able to combine the expenses incurred in the grant year and the preceding financial year.

This amendment Bill provides that applicants will be eligible for an EMDG grant if their eligible expenses equal or exceed a \$10,000 threshold amount. The current provision which provides for a \$5,000 minimum grant will remain (except for applicants claiming in grants years three to eight who might have their grant reduced or denied because of the Bill's proposed performance measure), as will the current provision enabling first-time applicants to combine two years' expenses. The \$15,000 non-reimbursable amount will also be lowered to \$10,000.

7. Extend the limit on the number of grants from seven to eight annual grants

The Act currently provides for applicants (except approved bodies, approved joint ventures and approved trading houses) to receive up to seven grants. This amendment Bill provides for applicants currently subject to the seven grant limitation to now be entitled to receive up to eight grants with no change to the rules for approved bodies, approved joint ventures and approved trading houses.

8. Replace the current list of eligible internal and external services with a new 'non-tourism services' category which will provide for all services supplied to foreign residents whether delivered inside or outside of Australia to be eligible unless specified in the EMDG Act Regulations

The Act currently provides that both external and internal services can be eligible products. It provides that all external services are eligible for EMDG support except those specified in the EMDG Regulations but that only those internal services specified in these Regulations are eligible.

This amendment Bill removes the current distinction between internal and external services, and provides that all non-tourism services are eligible unless specified in the EMDG Regulations.

9. Introduce a performance measure for applicants that have already received two grants. Under these requirements, applicants claiming their third and subsequent EMDG grants (other than approved bodies and approved trading houses) must make a choice between two options. The two options provide alternative ways for applicants to show that they meet the performance requirements.

The EMDG scheme had an export performance test (EPT) for all applicants (other than approved bodies and approved trading houses) claiming in their third and subsequent grant years until 2006-07 (2005-06 grant year). This test was removed as part of the *Export Market Development Grants Legislation Amendment Act 2006*.

With the removal of the EPT, EMDG applicants are currently entitled to receive up to seven grants without having to meet any performance requirements.

This Bill provides for a new performance measure for applicants (except approved bodies and approved trading houses) claiming their third and subsequent EMDG grants. These applicants must make a choice between two options. These options provide alternative ways for applicants to show that they meet the performance requirements. The choice is mandatory and must be made at the time an applicant applies for a grant.

Option A involves a modified method of calculating an applicant's grant entitlement with details included in a legislative instrument to be made by the Minister. Option B will require applicants to meet an additional eligibility criterion in order to be able to receive grants, namely the Australian net benefit requirements, with its rules to be contained in a legislative instrument to be made by the Minister. Applicants choosing Option B will be required to provide information and documents as specified in a legislative instrument.

## **FINANCIAL IMPACT STATEMENT**

Expenditure under the Act is set through annual Appropriation Acts. A capping mechanism ensures that expenditure under the scheme is limited to the amount appropriated.

## **EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 2008**

### **ABBREVIATIONS**

The Act	<i>Export Market Development Grants Act 1997</i>
Austrade	Australian Trade Commission
Austrade Act	<i>Australian Trade Commission Act 1985</i>
grant year	The year in which expenses are incurred by a grants applicant
CEO	Chief Executive Officer of the Australian Trade Commission

## NOTES ON CLAUSES

- Clause 1 This Act may be cited as the *Export Market Development Grants Amendment Act 2006*.
- Clause 2 This Act commences on the day on which it receives Royal Assent.
- Clause 3 There is one Schedule amending the *Export Market Development Grants Act 1997* and the *Australian Trade Commission Act 1985*.

## SCHEDULE 1—AMENDMENTS

### PART 1 – General amendments

#### Amendment of the *Australian Trade Commission Act 1985*

- Items 1 & 2 Under this Bill's performance measure for applicants (other than approved bodies and approved trading houses) claiming their third and subsequent grants, the rules for deciding whether an applicant meets the grants option A requirements are to be contained in a legislative instrument – refer to Item 29. This legislative instrument may give the CEO of Austrade powers to exercise administrative discretion in transferring or adjusting export earnings under the Act.

Paragraph 8(b) of the Austrade Act currently provides for the CEO of Austrade to do things required by the Austrade Act or by any other Act to be done by Austrade. This Item amends the Austrade Act by formally permitting the CEO of Austrade to perform functions under an instrument made under an Act.

#### Amendment of the *Export Market Development Grants Act 1997*

- Item 3 The Act currently provides for applicants (except approved bodies, approved joint ventures and approved trading houses) to receive up to seven grants. This Item provides for applicants currently subject to the seven grant limitation to now be entitled to receive up to eight grants with no change to the rules for approved bodies, approved joint ventures and approved trading houses.
- Item 4 The Act currently provides for all EMDG applicants except approved bodies, approved joint ventures and approved trading houses to have annual income of \$30 million or less for the grant year. This Item increases the income ceiling of applicants from \$30 million to \$50 million. The Act's current provisions for

approved bodies, approved joint ventures and approved trading houses will not change.

Items 5 - 8 Further to Item 13 and the Bill's new performance measure, these Items amend the Act's Part 3 eligibility rules so that applicants (other than approved bodies, approved trading houses and trusts) claiming their third and subsequent grants that choose grants option B must meet the Australian net benefits requirements in order to be eligible for a grant.

Item 9 Item 3 refers

Item 10 Item 4 refers

Items 11 – 12 Further to Items 5 - 8, these Items amend the Act's Part 3 eligibility rules so that persons acting as trustee of a trust estate that choose grants option B must meet the Australian net benefits requirements in order to be eligible for a grant.

Item 13 This Bill introduces a performance measure for applicants (other than approved bodies and approved trading houses) claiming their third and subsequent grants. Under these requirements, applicants must set out a statement that they choose either grants option A or grants option B in relation to a grant year – refer to Item 32. The two options provide alternative ways for applicants to show that they meet the performance requirements.

This Item provides that the CEO of Austrade must decide whether an applicant that chooses grants option B meets the Australian net benefit requirements. It provides for the Minister for Trade to make a legislative instrument to determine these requirements.

The legislative instrument is likely to be similar in concept to the current *Export Market Development Grants (Significant Net Benefit) Guidelines 2006*. To determine whether an applicant meets the Australian net benefit requirements, the instrument may require Austrade to take into account issues such as job creation, location of R & D activities, financial resources and/or economic benefits to Australia.

The reason for including these assessment requirements in a legislative instrument is that the relevant assessment criteria may need to be modified depending on Austrade's experience administering the Bill's performance measure.

Item 14 The Act currently provides that both external and internal services can be eligible products. It provides that all external services are eligible for EMDG support except those specified in the EMDG Regulations but that only those internal services specified in these Regulations are eligible.

This Item removes the current distinction between internal and external services, and provides that all non-tourism services are eligible unless specified in the EMDG Regulations.

Items 15 - 21 Item 14 refers

Item 22 The Act currently provides for a \$15,000 minimum expenses threshold. It also provides for all applicants to receive a minimum grant of \$5,000 and for first-time applicants to be able to combine the expenses incurred in the grant year and the preceding financial year.

This amendment Bill provides that applicants will be eligible for an EMDG grant if their eligible expenses are equal to or exceed a \$10,000 threshold amount. The current provision which provides for a \$5,000 minimum grant will remain (except for applicants claiming in grants years three to eight who might have their grant reduced or denied because of the Bill's proposed performance measure), as will the current provision enabling first-time applicants to combine two years' expenses. The \$15,000 non-reimbursable amount will also be lowered to \$10,000 – Item 28 refers.

Item 23 This Item adds two new eligible expense categories to the range of eligible expenses (one for the expenses of granting, registering or extending rights under foreign laws in relation to eligible intellectual property and another for the expenses of obtaining insurance against costs likely to be incurred to protect the rights). The claimable expenses will be limited to reasonable expenses incurred by the applicant in payments to persons that were not closely related to the applicant, and must be for an approved promotional purpose.

Items 24 - 26 Item 23 refers

Item 27 Item 29 refers

Item 28 Further to Item 22, the Act currently provides a formula for calculating an applicants' provisional grant amount. This Bill changes the amount in this formula from \$7,500 to \$5,000. Under the Bill, an applicant with, for example, \$50,000 eligible expenditure in a grant year will now have its provisional grant amount calculated as  $[50\% \times \$50,000] - \$5,000 = \$20,000$ .

This Item will mean that the non-reimbursable amount for all applicants is lowered from \$15,000 to \$10,000.

The current provision which provides for a \$5,000 minimum grant will remain (except for applicants claiming in grants years three to eight who might have their grant reduced or denied because of the Bill's proposed performance measure), as will the current provision enabling first-time applicants to combine two years' expenses.

The impact of this measure on grant amounts will be as shown in the following table, given that the maximum grant is at the same time being increased to \$200,000 – refer Item 30.

Table: EMDG grants amount – current and proposed

Eligible expenditure	Grant – current rules	Grant – proposed rules
\$5,000	0	0
\$10,000	0	\$5,000
\$15,000	\$5,000	\$5,000
\$20,000	\$5,000	\$5,000
\$25,000	\$5,000	\$7,500
\$30,000	\$7,500	\$10,000
\$50,000	\$17,500	\$20,000
\$100,000	\$42,500	\$45,000
\$200,000	\$92,500	\$95,000
\$300,000	\$142,500	\$145,000
\$315,000	\$150,000	\$152,500
\$400,000	\$150,000	\$195,000
\$410,000	\$150,000	\$200,000
\$420,000	\$150,000	\$200,000

Item 29

This Bill provides for a new performance measure for applicants (other than approved bodies and approved trading houses) claiming their third and subsequent EMDG grants. These applicants must make a choice between two options. These options provide alternative ways for applicants to show that they meet the performance requirements. The choice is mandatory and must be made at the time an applicant applies for a grant.

Option A involves a modified method of calculating an applicant's grant entitlement with details to be included in a legislative instrument made by the Minister. This Item provides for the making of this legislative instrument. This legislative instrument may confer on the CEO of Austrade a power to make decisions of an administrative character. These decisions would be limited to transferring or adjusting export earnings of an applicant under the Act, that is, to functions that were previously carried out under section 94 and 96 of the Act before it was amended by the *Export Market Development Grants Legislation Amendment Act 2006*.

The legislative instrument will contain the basis for calculating a grant amount for applicants that choose grants option A. The provisional grant will then be determined as the lesser of (a) the provisional grant calculated as if the applicant was not subject to the option A requirements and (b) the amount determined in accordance with option A (as contained in the legislative instrument).

The calculation of grant amounts for applicants choosing grants option A will be based on the rules for the former export performance test applying under the EMDG scheme. This test was removed as part of the *Export Market Development Grants Legislation Amendment Act 2006*.

The reason for including these assessment requirements in a legislative instrument is that the assessment criteria may need to be modified depending on Austrade's experience administering the Bill's performance measure.

Item 30 Under the current EMDG Act, all applicants except approved trading houses are entitled to receive up to \$150,000 per grant. It also provides for a \$250,000 ceiling for the combined grants payable for members of related companies groups.

This Item increases the maximum grant from \$150,000 to \$200,000. The current approved trading house maximum grant limit of \$500,000 and the \$250,000 ceiling for the combined grants payable for related company group members will not change.

Item 31 This Item remedies the conflict that arises from the fact that applicants choosing grants option B will apply for grants before their eligibility under the Act's revised Part 3 is determined.

Item 32 This Bill provides that all applicants (other than approved bodies and approved trading houses) claiming their third and subsequent grants must provide a statement that they choose one of grants option A or grants option B. This statement must be provided at the time of applying for the grant. An application will not be taken to be properly made unless such a statement is received.

In addition, applicants choosing grants option B will be required to provide information and documents as specified in a legislative instrument if such an instrument has been made – refer Item 34. To ensure that Austrade can continue to be able to process most applications in the same financial year in which they are lodged, this specified information and these documents should be provided at the time of applying for the grant.

Item 33 This Item provides that Austrade must not consider an application made by a person subject to the Bill's performance measure that does not provide a statement that chooses one of grants option A or grants option B. In addition, the Item provides that Austrade must not consider an application made by an applicant that chooses grant option B where that applicant has not provided the information and documents required to be provided as specified in a legislative instrument if such an instrument has been made – refer to Items 32 and 34.

Item 34 Further to Item 32, this Item provides that the CEO of Austrade may make an instrument specifying information and documents to be provided by applicants that are subject to the Bill's performance measure and that choose grants option B.

The reason for including the information requirements in an Austrade determination is that the required information may change depending on Austrade's experience administering the Bill's performance measure. It is expected that the information requirements will specify that applicants must provide their latest audited financial statements and other documentation to show that Australia derives net economic benefits from their export activities.

Item 35 The Act currently provides for bodies representing the interests of an industry or of a substantial part of an industry to be able to apply for approval as an approved body. The current Ministerial guideline *Guidelines for the approval, variation of approval, and cancellation of approved bodies* provides that approved bodies should be peak bodies representing the majority of businesses engaged in an industry. This means that State and regional industry associations including tourism promotion bodies are not currently able to qualify as EMDG approved bodies.

This Item adds bodies which represent more than one industry and State/Territory or regional bodies to the range of bodies able to apply for approved body status under the Act.

This amendment to the Act will be followed by an amendment to the Ministerial guideline *Guidelines for the approval, variation of approval, and cancellation of approved bodies* to remove the requirement that approved bodies be peak bodies representing the majority of businesses engaged in an industry. This amendment will mean that State and regional industry associations, including tourism promotion bodies, will be able to receive EMDG grants as approved bodies.

Item 36 This Item provides that a decision by the CEO of Austrade that a person that did not meet the Australian net benefit requirements in relation to a grant year is a reviewable decision.

Item 37 Applicants subject to the Bill's performance measure that choose grants option A will be subject to rules to be contained in a legislative instrument to be made by the Minister for Trade. This Item provides for an applicant dissatisfied with a decision made by the CEO of Austrade under this legislative instrument to be entitled to an internal review.

Item 38 This Item adds the term *Australian net benefit requirements* to the Act's list of defined terms

Items 39 - 46 Item 14 refers.

**PART 2 – Other Amendments**

Item 47 This Item amends the Act's Diagram 2 – Items 3, 4 and 13 refer.

Item 248 - 49 These Items amend the Act's Diagram 3 – Item 14 refers

Items 50 - 56 These Items amend the Act's list of defined terms in Part 9

**PART 3 – Application of Amendments**

Item 57 This Item provides that the amendments of the *Export Market Development Grants Act 1997* in this amendment Bill apply to any grant year that commences on or after 1 July 2008.