



Export Market Development Grants Amendment Act 2001

No. 60, 2001



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

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Export Market Development Grants Amendment Act 2001

No. 60, 2001

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

[Assented to 28 June 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Export Market Development Grants Amendment Act 2001*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Parts 2 to 14 of Schedule 1 commence, or are taken to have commenced, on 1 July 2001.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Export Market Development Grants Act 1997

Part 1—Continuation of the export market development grants scheme

Export Market Development Grants Act 1997

1 Subsection 106A(1)

Omit “2000”, substitute “2005”.

2 Subsection 106A(3)

Omit “2000”, substitute “2005”.

3 Section 107 (paragraph (a) of the definition of *grant year*)

Repeal the paragraph, substitute:

- (a) a year commencing on 1 July during the period from the start of 1 July 1996 to the end of 30 June 2006; or

Part 2—Minimum expenses and minimum grants

Export Market Development Grants Act 1997

4 Paragraph 29(d)

Omit “\$20,000”, substitute “\$15,000”.

5 Subsection 63(1)

After “subsections (2),”, insert “(2A),”.

6 After subsection 63(2)

Insert:

(2A) If, after applying subsection (1) and subsection (2) (where applicable), an applicant’s provisional grant amount for a grant year is less than \$2,500, the applicant’s *provisional grant amount* for the grant year is \$2,500.

7 Paragraph 63(3)(a)

Omit “or (2)”, substitute “, (2) or (2A)”.

Part 3—Overseas representatives and consultants

Export Market Development Grants Act 1997

8 Section 32

Omit “item 1”, substitute “item 1A”.

9 Subsection 33(2) (table item 1)

Repeal the item, substitute:

- | | | |
|----|--|--|
| 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—\$250,000 for the grant year when combined with the expenses of engaging consultants (see item 1B) in the grant year; or
(d) if the applicant is not a grantee in respect of any previous grant year—\$250,000 for the grant year and the immediately preceding year when combined with the expenses of engaging consultants (see item 1B) in the grant year and the immediately preceding year |
|----|--|--|

Schedule 1 Amendment of the Export Market Development Grants Act 1997
Part 3 Overseas representatives and consultants

1B	engaging as a consultant (either in or outside Australia) one or more persons that, in Austrade's opinion 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 the limit (when combined with expenses of maintaining overseas representatives) set out in item 1A
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10 Subsection 33(2) (table item 6)

Repeal the item.

Part 4—Promotional events

Export Market Development Grants Act 1997

11 Subsection 33(2) (table item 5)

Repeal the item, substitute:

- | | | |
|---|--|---|
| 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 Austrade's opinion, 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 Austrade's opinion, were not closely related to the applicant |

Part 5—Grants entry requirements

Export Market Development Grants Act 1997

12 Subsection 22(2)

Omit “of at least 28 days”.

Part 6—Registration

Export Market Development Grants Act 1997

13 Paragraph 7(1)(h)

Repeal the paragraph, substitute:

- (h) if Division 5 applies to the person—Austrade has decided under section 20 that the person met the grants entry requirements.

14 Paragraph 7(4)(h)

Repeal the paragraph, substitute:

- (h) if Division 5 applies to the person (as trustee of the trust estate)—Austrade has decided under section 20 that the person (in that capacity) met the grants entry requirements.

15 Division 5 of Part 3 (heading)

Repeal the heading, substitute:

Division 5—Grants entry requirements

16 Subsection 18(1)

Omit “intends to apply”, substitute “applies”.

17 Subsection 18(2)

Omit “intends to apply”, substitute “applies”.

18 Subsection 18(3)

Omit “intends to apply”, substitute “applies”.

19 Section 19

Repeal the section.

20 Subsection 20(1)

Omit “Once the person has been registered,”.

21 Paragraph 94(3)(c)

Repeal the paragraph.

Part 7—External services earnings for eligibility purposes

Export Market Development Grants Act 1997

22 At the end of section 7

Add:

Relevant earnings for eligible external services

- (5) In applying item 3 of the table in subsection 10(1) to work out a person's export earnings for the purposes of paragraph (1)(e), (2)(b) or (4)(d) of this section, do not deduct any amount of consideration paid, or payable, outside Australia in relation to the service concerned.

23 Subsection 10(1) (table item 3, column 3)

After "that service less", insert "(subject to subsection 7(5))".

Part 8—Sale and supply of services

Export Market Development Grants Act 1997

24 Subsection 10(1) (table item 3, column 2)

Omit “supplied at any time by the person”, substitute “sold at any time by the person to a person that is not a resident of Australia”.

25 Subsection 10(1) (table item 3, column 3)

Omit “supply”, substitute “sale”.

26 Subsection 10(1) (table item 4, column 2)

Omit “supplied at any time by the person”, substitute “sold at any time by the person to a person that is not a resident of Australia”.

27 Subsection 10(1) (table item 4, column 3)

Omit “supply”, substitute “sale”.

28 Subsection 10(1) (table item 5, column 2)

Omit “supplied”, substitute “sold”.

29 Subsection 10(1) (table item 5, column 2)

Omit “supply”, substitute “sale”.

30 Subsection 10(1) (table item 5, column 3)

Omit “supply”, substitute “sale”.

31 Subsection 10(1) (table item 6, column 2)

Omit “supplied”, substitute “sold”.

32 Subsection 10(1) (table item 6, column 3)

Omit “supply”, substitute “sale”.

33 Subsection 10(1) (table item 7, column 2)

Omit “supplied”, substitute “sold”.

34 Subsection 10(1) (table item 7, column 3)

Omit “supply”, substitute “sale”.

35 Subsection 25(2)

Repeal the subsection, substitute:

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

Note: For *tourism service* see section 107. For *resident of Australia* see section 114. For *inbound tour operator* see subsection 10(1) (table item 5).

36 Paragraph 37(d)

Repeal the paragraph, substitute:

- (d) if the applicant is not an approved body or an approved trading house—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 or an approved trading house—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;

Part 9—Publications, films and computer games of certain classifications etc.

Export Market Development Grants Act 1997

37 Section 40 (table item 17)

Repeal the item, substitute:

17	Expenses associated with publications, films and computer games of certain classifications	57
18	Expenses associated with prohibited or potential prohibited Internet content	57A
19	Expenses associated with telephone sex services	57B

38 Section 57

Repeal the section, substitute:

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) 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 prohibited or potential prohibited Internet 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 Internet content that is:

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

Note: For *Internet content*, *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.

39 Section 107

Insert:

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

40 Section 107

Insert:

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

41 Section 107

Insert:

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

42 Section 107

Insert:

Internet content has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

43 Section 107

Insert:

potential prohibited content has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

44 Section 107

Insert:

prohibited content has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

45 Section 107

Insert:

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

46 Section 107

Insert:

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

Part 10—Requirement for ABN

Export Market Development Grants Act 1997

47 After section 85

Insert:

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.

48 Section 107

Insert:

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

Part 11—Providers of courses to overseas students

Export Market Development Grants Act 1997

49 At the end of Subdivision 3 of Division 3 of Part 7

Add:

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.

50 Section 107

Insert:

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

51 Section 107

Insert:

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

52 Section 107

Insert:

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

Part 12—Insolvency

Export Market Development Grants Act 1997

53 Paragraph 7(1)(f)

Repeal the paragraph.

54 Subsection 7(1) (note)

Omit “, *under insolvency administration*”.

55 Paragraph 7(2)(c)

Repeal the paragraph.

56 Subsection 7(2) (note)

Omit “, *export earnings, associate* and *under insolvency administration*”, substitute “and *export earnings*”.

57 Subsection 7(3)

Repeal the subsection, substitute:

Approved trading house

- (3) An approved trading house is eligible for a grant in respect of a grant year if there are no disqualifying convictions outstanding against the trading house under section 17 when the trading house applies for the grant.

Note: For *approved trading house, grant* and *grant year* see section 107.

58 Paragraphs 7(4)(e) and (f)

Repeal the paragraphs.

59 Subsection 7(4) (note)

Omit “*under insolvency administration*”.

60 Division 3 of Part 3

Repeal the Division.

61 Subsection 87(2) (note)

Repeal the note, substitute:

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

62 At the end of Division 3 of Part 7

Add:

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 deed of assignment or deed of arrangement under Part X of that Act;
 - (iv) creditors of the individual have, in the previous 3 years, accepted a composition 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 or official management;
 - (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, or the official manager, 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).

63 Section 107 (definition of *under insolvency administration*)

Omit “sections 14 and 15”, substitute “sections 87B and 87C”.

Part 13—Marketing visits

Export Market Development Grants Act 1997

64 Subsection 34(6)

Omit “preceding 5 years”, substitute “preceding year”.

Part 13A—Events promoters

64A Subsection 10(1) (after table item 4)

Insert:

4A	an eligible event marketed by the person under a written contract between the person and the event holder	the amount or value of the consideration received by the event holder during the year for the sale of goods and services in connection with the event (including participation in the event) to persons attending the event that are not residents of Australia
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64B Subsection 10(1) (table, note)

Omit “*eligible goods*”, substitute “*eligible event, eligible goods, event holder*”.

64C At the end of section 10

Add:

- (7) The regulations may make provision for calculating the relevant earnings of events promoters if 2 or more events promoters market the same eligible event (see item 4A of the table in subsection (1)).

64D Subsection 23(1)

After “services,”, insert “an event,”.

64E After section 25

Insert:

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 Austrade’s opinion, 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: Austrade's 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 Austrade determines, in writing, having regard to all the facts available to it, 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.

64F At the end of section 37

Add:

- (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.

64G After subsection 46(1)

Insert:

- (1A) However, subsection (1) does not apply to expenses of an applicant incurred as an events promoter.

64H Paragraph 101(1)(b)

Repeal the paragraph, substitute:

- (b) guidelines to be complied with by Austrade 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

64J Section 107

Insert:

eligible event has the meaning given by section 25A.

64K Section 107 (after paragraph (b) of the definition of *eligible products*)

Insert:

(ba) eligible events; or

64L Section 107

Insert:

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

64M Section 107

Insert:

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

64N Section 107

Insert:

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.

Part 13B—Bringing buyers to Australia

64P Subsection 33(2) (at the end of the table)

Add:

- | | | |
|---|---|---|
| 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 Austrade's opinion, 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 |
|---|---|---|

64Q After section 34

Insert:

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).

Part 14—Reader's Guide diagrams

Export Market Development Grants Act 1997

65 Diagrams 1 and 2 in the Reader's Guide

Repeal the diagrams, substitute:

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

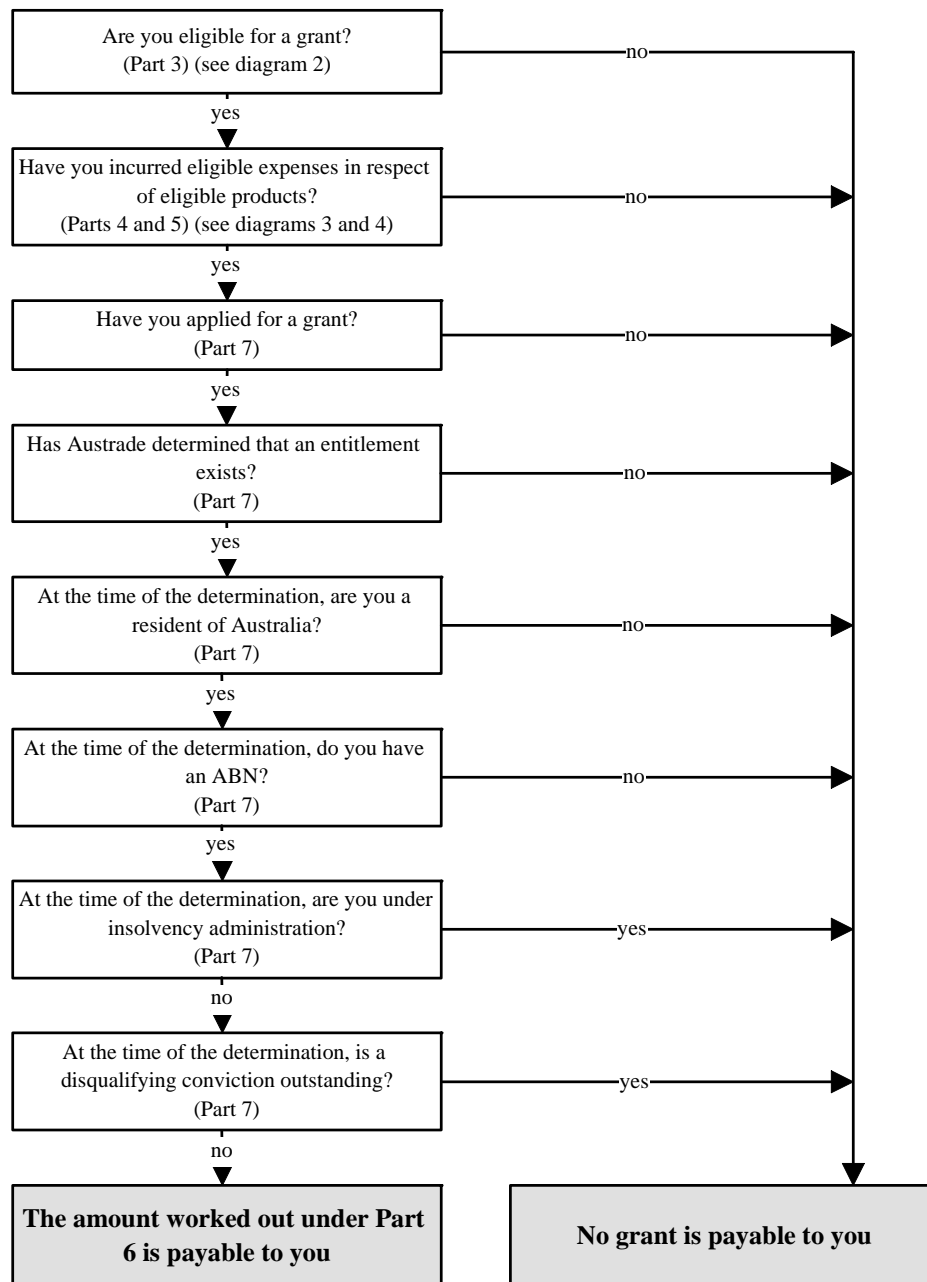
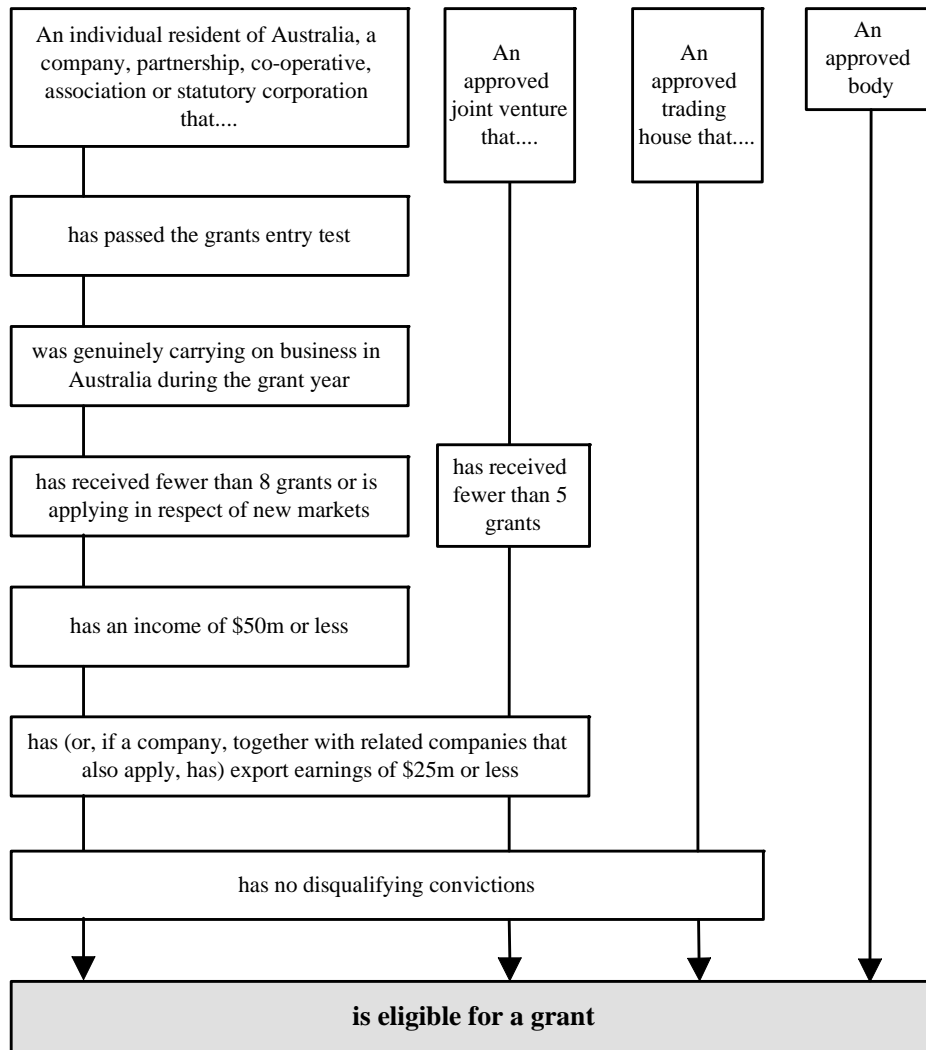


Diagram 2—Who is eligible for a grant? (Overview of Part 3)



66 Diagram 3 in the Reader's Guide (table item 4)

Repeal the item, substitute:

3A. Event held in Australia marketed to persons outside Australia.

Austrade satisfied that Australia will derive a significant net benefit from holding of the event

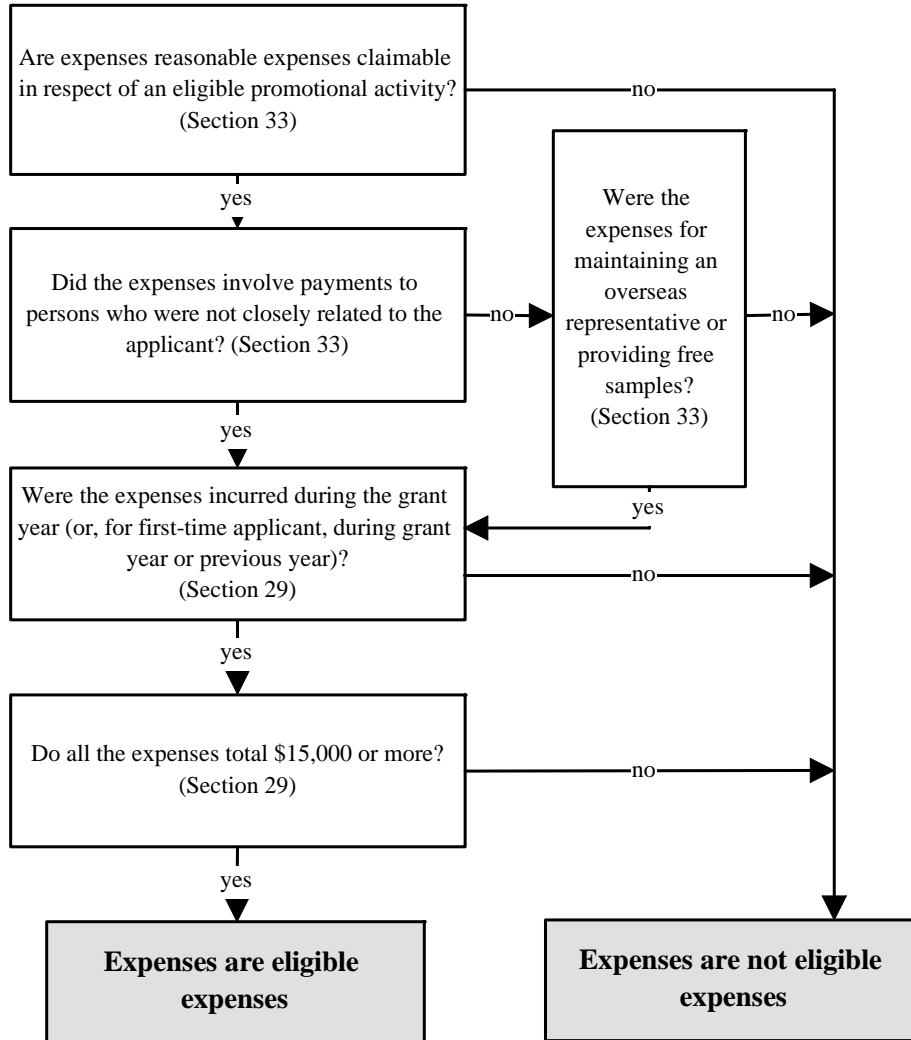
Schedule 1 Amendment of the Export Market Development Grants Act 1997
Part 14 Reader's Guide diagrams

4. Tourism service supplied in Australia to a non-resident Austrade satisfied that Australia will derive a significant net benefit from supply of the service

67 Diagram 4 in the Reader's Guide

Repeal the diagram, substitute:

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



Part 15—Application provisions

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.

*[Minister's second reading speech made in—
House of Representatives on 24 May 2001
Senate on 18 June 2001]*

(84/01)