



Export Market Development Grants Legislation Amendment Act 2006

No. 57, 2006

**An Act to amend legislation relating to export
market development grants, and for related
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Amendment of the Export Market Development Grants Act 1997		
		4
	<i>Export Market Development Grants Act 1997</i>	4
Schedule 2—Repeal of the Export Expansion Grants Act 1978		16
	Part 1—Repeal of the Export Expansion Grants Act 1978	16
	<i>Export Expansion Grants Act 1978</i>	16
	Part 2—Consequential amendments	17
	<i>Australian Trade Commission Act 1985</i>	17



Export Market Development Grants Legislation Amendment Act 2006

No. 57, 2006

An Act to amend legislation relating to export market development grants, and for related purposes

[Assented to 21 June 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Export Market Development Grants
Legislation Amendment Act 2006*.

2 Commencement

- (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		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	21 June 2006
2. Schedule 1, items 1 to 33	The day on which this Act receives the Royal Assent.	21 June 2006
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
4. Schedule 1, items 35 to 55	The day on which this Act receives the Royal Assent.	21 June 2006
5. Schedule 2, items 1 and 2	The day on which this Act receives the Royal Assent.	21 June 2006
6. Schedule 2, items 3 and 4	The day on which this Act receives the Royal Assent. However, if Part 1 of Schedule 1 to the <i>Australian Trade Commission Legislation Amendment Act 2006</i> commences before that day, the provision(s) do not commence at all.	21 June 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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—Amendment of the Export Market Development Grants Act 1997

Export Market Development Grants Act 1997

1 Reader's guide (diagram 3)

Repeal the diagram, substitute:

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

What are eligible products?		
Item	These products...	if they meet these conditions...
1	Goods	(a) goods are made in Australia; or (b) Austrade is satisfied that Australia will derive a significant net benefit from sale of the goods outside Australia
2	External service supplied outside Australia to a non-resident	Austrade is satisfied that Australia will derive a significant net benefit from supply of the service
3	Internal service supplied in Australia to a non-resident	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	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	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

What are eligible products?

Item	These products...	if they meet these conditions...
8	Know-how	know-how results to a substantial extent from research or work done in Australia

2 List of terms defined in Part 9

Omit “export earnings”.

3 List of terms defined in Part 9

Omit “goods made in Australia”.

4 List of terms defined in Part 9

Omit “goods made outside Australia”.

5 List of terms defined in Part 9

Omit “process”.

6 Division 2 of Part 3

Repeal the Division.

7 Subsection 21(1)

After “may”, insert “, by legislative instrument,”.

8 Subsection 21(1)

Omit “in writing”.

9 Subsection 21(4)

Repeal the subsection.

10 Section 24

Repeal the section, substitute:

24 Eligible goods

Goods are *eligible goods* if:

- (a) they are made in Australia; or

- (b) 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: Austrade's decisions under this section are subject to guidelines determined by the Minister under section 101.

11 Subsection 25(2)

Omit "an inbound tour operator", substitute "a resident of Australia".

12 Subsection 25(2) (note)

Omit "For *inbound tour operator* see subsection 10(1) (table item 5).".

13 Subsection 33(2) (table items 1A and 1B)

Repeal the items, 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—\$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 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 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
----	--	--

14 Subsection 33(2) (note 1)

Omit “For *reasonable expenses* see section 35.”.

15 At the end of subsection 33(2)

Add:

Note 3: Under section 96, Austrade can make certain adjustments if it is satisfied that any expenses are unreasonable.

16 Paragraph 34(4)(a)

Omit “\$200”, substitute “\$300”.

17 Section 35

Repeal the section.

18 Paragraph 37(1)(c)

Repeal the paragraph, substitute:

(c) eligible goods that:

- (i) are not made in Australia; and
- (ii) any person intends to sell outside Australia;

19 Subsection 37(1) (note)

Repeal the note, substitute:

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.

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

20 After subsection 37(1)

Insert:

(1A) For the purposes of section 33, if an applicant is incorporated under the *Corporations Act 2001*, 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).

21 At the end of section 37

Add:

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*.

22 Section 40 (table item 15)

Repeal the item.

23 Section 40 (after table item 16)

Insert:

16A Expenses of over \$10,000 paid in cash by applicant 56A

24 Section 44

Omit “that has been declared, for the purposes of paragraph 10(3)(b),”, substitute “that the Minister declares, by legislative instrument, for the purposes of this section,”.

25 Subsection 49(1)

After “incurred as”, insert “any one or more of the following”.

26 Paragraph 49(1)(a)

Omit “products; or”, substitute “products;”.

27 Paragraph 49(1)(b)

Omit “products that the person to whom the remuneration is paid has entered into; or”, substitute “products;”.

28 Section 55

Repeal the section.

29 After section 56

Insert:

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.

30 Paragraph 62(a)

Omit “(Applicant party to transaction resulting in applicant obtaining grant etc.)”, substitute “(Power to adjust expenses and provisional grant amounts)”.

31 Subsection 63(1)

Omit “, (3)”.

32 Subsection 63(3)

Repeal the subsection.

33 Section 64

Repeal the section, substitute:

64 If applicant’s eligible expenses are adjusted by Austrade

If 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.

34 Subsection 72(3)

Omit “73(b)”, substitute “73(1)(b)”.

35 Subsection 90(2)

Omit “third”, substitute “fifth”.

36 Subsection 92(1)

Omit “may make a written determination”, substitute “may, by legislative instrument, make a determination”.

37 Subsections 92(2) and (3)

Repeal the subsections.

38 Divisions 2 and 3 of Part 8

Repeal the Divisions, substitute:

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 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 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: Austrade's decisions whether 2 businesses are similar are subject to guidelines determined by the Minister under section 101.

- (2) For the purposes of this Act, 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;
 - (b) if Austrade had decided that the previous owner met the grants entry requirements—the new owner is to be treated as if Austrade 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 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 Austrade

- (1) This section applies if it appears to 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, Austrade must:
 - (a) notify the applicant, in writing, that Austrade is of that opinion and of Austrade's reasons for being of that opinion; and
 - (b) ask the applicant to explain, within the period specified in the notice, why Austrade should not adjust the applicant's expenses under this section.
- (3) If, after the end of the period, Austrade is not satisfied with the applicant's explanation, Austrade may:
 - (a) make any adjustments that it 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.

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

39 Subsection 100(1)

Omit "may determine in writing", substitute "may, by legislative instrument, determine".

40 Subsection 100(4)

Repeal the subsection.

41 Subsection 101(1)

Omit "in writing", substitute "by legislative instrument".

42 After paragraph 101(1)(b)

Insert:

(ba) guidelines to be complied with by Austrade in determining, for the purposes of paragraph 24(a) and subparagraphs 37(1)(c)(i) and (g)(i), whether goods are made in Australia; and

(baa) guidelines to be complied with by Austrade 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

43 Paragraph 101(1)(d)

Repeal the paragraph, substitute:

(d) guidelines to be complied with by Austrade 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.

44 Subsection 101(2)

Omit "in writing", substitute "by legislative instrument".

45 Subsection 101(4)

Repeal the subsection.

46 Paragraph 105(b)

Omit “grant year” (wherever occurring), substitute “financial year”.

47 Subsections 106A(1) to (3)

Repeal the subsections, substitute:

- (1) Not later than 1 January 2010, 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 2010.

48 Section 107 (note to the definition of *export*)

Repeal the note.

49 Section 107 (definition of *export earnings*)

Repeal the definition.

50 Section 107 (definition of *goods made in Australia*)

Repeal the definition.

51 Section 107 (definition of *goods made outside Australia*)

Repeal the definition.

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

Omit “2006”, substitute “2011”.

53 Section 107 (definition of *process*)

Repeal the definition.

54 Section 110

Repeal the section.

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.

Schedule 2—Repeal of the Export Expansion Grants Act 1978

Part 1—Repeal of the Export Expansion Grants Act 1978

Export Expansion Grants Act 1978

1 The whole of the Act

Repeal the Act.

Part 2—Consequential amendments

Australian Trade Commission Act 1985

2 Subsection 64(4)

Repeal the subsection.

3 Subsection 71(4)

Repeal the subsection.

4 Subsection 92(1)

Omit “, but not the Commission’s operations under the *Export Expansion Grants Act 1978*”.

*[Minister’s second reading speech made in—
House of Representatives on 30 March 2006
Senate on 13 June 2006]*

(24/06)
