



# **Export Market Development Grants Amendment Act 2008**

**Act No. 33 of 2008 as amended**

This compilation was prepared on 9 March 2010

**[This Act was amended by Act No. 8 of 2010]**

**Amendments from Act No. 8 of 2010**

[Schedule 2 (item 5) amended items 54 and 55 of Schedule 1

Schedule 2 (item 5) commenced immediately after 23 June 2008]

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

[Assented to 23 June 2008]

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.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

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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:<br>(a) the grant or registration; or<br>(b) the extension of the term of registration; or<br>(c) the extension of the period of registration;<br>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:<br>(a) under the law of a foreign country; and<br>(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:

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- (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.

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**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**

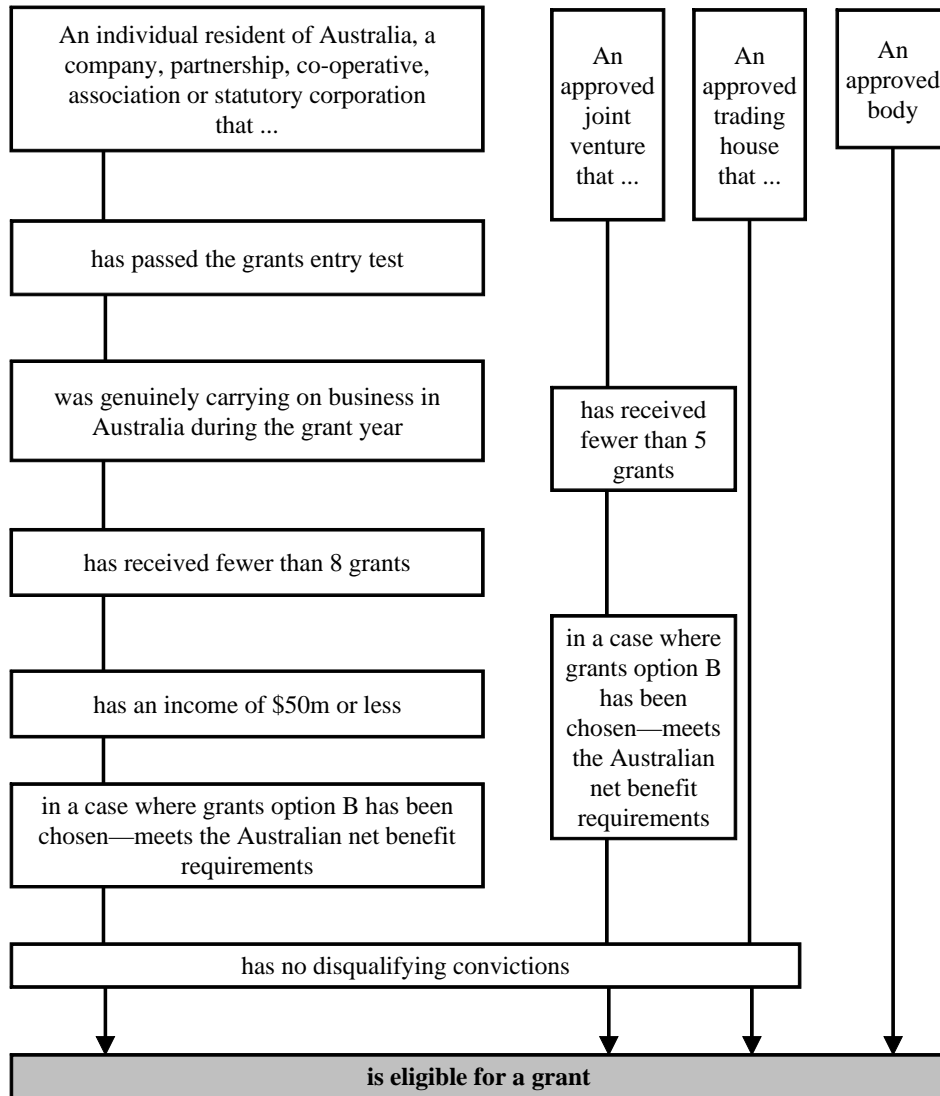
### ***Export Market Development Grants Act 1997***

#### **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
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**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 service”.

**55 List of terms defined in Part 9**

Omit “internal service”.

**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.