



# **Export Market Development Grants Legislation Amendment Act 2020**

**No. 138, 2020**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Export Market Development Grants Legislation Amendment Act 2020

No. 138, 2020

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## An Act to amend legislation in relation to export market development grants, and for related purposes

[Assented to 17 December 2020]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Export Market Development Grants Legislation  
Amendment Act 2020*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 December 2020
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	17 June 2021
3. Schedule 2	The day after this Act receives the Royal Assent.	18 December 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### **Part 1—Amendments**

#### *Australian Trade and Investment Commission Act 1985*

##### **1 Subsection 10(3)**

Omit “claim or application for a grant or other benefit”, substitute “application, grant agreement or grant”.

##### **2 Subsection 10(4)**

Repeal the subsection, substitute:

- (4) A direction given by the Minister under subsection (1) must not prejudicially affect an application made, or grant agreement entered into, under the *Export Market Development Grants Act 1997*.

##### **3 Section 90**

Repeal the section, substitute:

#### **90 Delegations by Minister and CEO**

- (1) The Minister may, in writing, delegate all or any of the Minister’s functions or powers under this Act, other than the Minister’s powers under sections 65 and 66, to the CEO.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) The CEO may, in writing, delegate all or any of the CEO’s functions or powers under this Act to a member of the staff of the Commission referred to in section 60.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (3) The CEO may, in writing, delegate all or any of the CEO’s functions or powers under the *Export Market Development Grants Act 1997*, or the rules made under that Act, to:

- (a) a member of the staff of the Commission referred to in section 60 of this Act; or

## Schedule 1 Main amendments

### Part 1 Amendments

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- (b) an APS employee in a non-corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) who holds or performs the duties of an Executive Level 1 position, or an equivalent or higher position.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (4) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the person who delegated the function or power.

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

### **4 Section 3**

Repeal the section, substitute:

### **3 Object of Act**

The object of this Act is to bring benefits to Australia by encouraging the creation, development and expansion of foreign markets for Australian products. This is done by providing targeted financial assistance, for promotional activities and development of marketing skills, to Australian small and medium enterprises and their representative organisations.

### **4 Simplified outline of this Act**

The CEO of Austrade may, on behalf of the Commonwealth, make grants to eligible persons to meet their eligible expenses in relation to eligible products.

To be eligible for a grant, a person must be Australian, and (in most cases) be ready to export, or already exporting, products of substantially Australian origin. The person must also meet any other conditions specified in rules made by the Minister.

Grants are paid in accordance with a grant agreement between the CEO of Austrade and a grantee. A grantee must spend the grant money, as well as at least a matching amount of their own money, on eligible expenses in relation to eligible products.



The CEO has powers to require information and documents from grantees and others.

## 5 Definitions

In this Act:

***applicable percentage*** has the meaning given by subsection 105(3).

***Austrade*** means the body continued in existence by section 7 of the *Australian Trade and Investment Commission Act 1985*.

***Australian law*** means a law of the Commonwealth, of a State or of a Territory.

***CEO of Austrade*** means the Chief Executive Officer of Austrade referred to in section 7B of the *Australian Trade and Investment Commission Act 1985*.

***eligible*** for a grant means eligible under Division 3 of Part 2.

***eligible expense*** has the meaning given by section 18.

***eligible product*** has the meaning given by subsection 17(1).

***export*** means export from Australia, but does not include the taking of goods out of Australia with the intention that the goods will at some later time be brought back to Australia to remain permanently in Australia.

***grant*** means a grant under this Act.

***grant agreement*** has the meaning given by subsection 9(1).

***grantee*** means a person who is party to a grant agreement (other than the CEO of Austrade on behalf of the Commonwealth).

***ready to export*** has the meaning given by the rules.

***relevant matter*** has the meaning given by subsection 102(7).

***reviewable decision*** has the meaning given by section 97.

***rules*** means rules made under section 106.

## 5 Parts 2 to 7

Repeal the Parts, substitute:

## Part 2—Grants

### Division 1—Simplified outline of this Part

#### 6 Simplified outline of this Part

The CEO of Austrade may, from time to time, invite persons to apply for grants under this Act.

If the CEO is satisfied that an applicant is eligible for a grant, will have eligible expenses in relation to eligible products and meets any other requirements in the rules, the CEO may enter into a grant agreement with the person under which the grant will be paid.

To be eligible for a grant, a person must be Australian and (in most cases) be ready to export, or already exporting, products of substantially Australian origin. The rules specify other conditions that must be met.

A grantee must spend the grant money, as well as at least a matching amount of their own money, on eligible expenses in relation to eligible products.

The rules specify the kinds of expenses that grants are to be used for. Broadly, expenses must be in respect of promotional activities to market eligible products in foreign countries, or training activities to develop skills in such marketing.

A grantee must comply with this Act and the rules, and with the terms and conditions of the grant agreement.

The amount of a grant to be made to a grantee is determined in accordance with the rules.

Certain decisions of the CEO are reviewable by the Administrative Appeals Tribunal.

## **Division 2—Grants**

### **7 Invitation to apply for grant**

The CEO of Austrade may, from time to time, invite persons to apply for grants of money under this Act for the purposes of meeting eligible expenses in relation to eligible products.

### **8 Application for grant**

- (1) A person may apply, in writing, to the CEO of Austrade for a grant in response to an invitation under section 7.
- (2) If the rules prescribe requirements in relation to applications, the application must comply with the requirements.

### **9 Grant agreement**

- (1) If:
  - (a) a person applies for a grant in accordance with section 8; and
  - (b) the CEO of Austrade is satisfied that:
    - (i) the person is eligible for a grant; and
    - (ii) the person will have eligible expenses in relation to eligible products during the term of the agreement; and
    - (iii) any other requirements prescribed by the rules for the purposes of this subparagraph are met in relation to the application;

the CEO may, on behalf of the Commonwealth, enter into an agreement (a **grant agreement**) with the person for the making of a grant to the person for the purposes of meeting eligible expenses of the person in relation to eligible products.

Note: A decision of the CEO not to enter into a grant agreement with a person is reviewable under Division 7.

- (2) The grant agreement must:
  - (a) be in the form (if any) prescribed by the rules; and
  - (b) be for a period that complies with any requirements prescribed by the rules for the purposes of this paragraph; and
  - (c) comply with any other requirements prescribed by the rules for the purposes of this paragraph.

## **10 Terms and conditions of grant**

- (1) A grantee must comply with this Act and the rules and with any other terms and conditions specified in the grant agreement.
- (2) The grant agreement must include terms and conditions that:
  - (a) have the effect of requiring the grantee to spend the grant money, as well as at least a matching amount of the grantee's own money, on eligible expenses of the grantee in relation to eligible products; and
  - (b) provide for:
    - (i) circumstances in which the grantee must repay amounts to the Commonwealth; and
    - (ii) any other matters prescribed by the rules for the purposes of this paragraph.

Note: An amount repayable to the Commonwealth as mentioned in subparagraph (2)(b)(i) would be a debt due to the Commonwealth.

- (3) Subsection (2) does not limit the terms and conditions that may be specified in the grant agreement.

## **11 Payment of grant**

- (1) A grant, or instalment of a grant, is payable to a person, at a time or in relation to a period, if:
  - (a) the grant agreement to which the person is party provides for the payment of the grant or instalment at the time or in relation to the period; and
  - (b) the CEO of Austrade is satisfied that, at the time or in relation to the period, the person:
    - (i) is eligible for a grant; and
    - (ii) has had or will have eligible expenses in relation to eligible products; and
  - (c) the CEO is satisfied that any other requirements prescribed by the rules for the purposes of this paragraph are met in relation to the payment of the grant or instalment.

Note: The amount of a grant is determined in accordance with Division 6.

- (2) The CEO must, on behalf of the Commonwealth, pay to the person a grant or instalment payable to the person under subsection (1).

- (3) Subsections (1) and (2) have effect subject to this Act and the rules, and the terms and conditions of the grant agreement.

Note: For example, a grant or instalment may not be payable if the person fails to comply with a requirement to give information under Part 3 (information gathering powers).

## **12 CEO of Austrade has powers etc. of the Commonwealth**

- (1) The CEO of Austrade, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as the grantor of a grant under this Act.
- (2) Without limiting subsection (1):
- (a) an amount payable to the Commonwealth by way of the repayment of the whole or a part of a grant is to be paid to the CEO on behalf of the Commonwealth; and
  - (b) the CEO may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns a grant.

## **13 Conferral of powers on CEO of Austrade**

The CEO of Austrade may exercise a power conferred on the CEO by a grant agreement.

## **14 Executive power of the Commonwealth**

This Part does not, by implication, limit the executive power of the Commonwealth.

## **Division 3—Eligibility for grant**

### **15 Eligible kinds of persons**

A person of any of the following kinds is eligible for a grant if the person also satisfies the conditions set out in section 16:

- (a) an individual who is Australian within the meaning of the rules;
- (b) a body incorporated under the *Corporations Act 2001*;

- (c) an association, or cooperative, incorporated under an Australian law;
- (d) a partnership that is Australian within the meaning of the rules;
- (e) a trust that is Australian within the meaning of the rules;
- (f) a body corporate established for a public purpose by or under an Australian law;
- (g) a kind of person prescribed by the rules.

Note: See sections 105A and 105B in relation to the treatment of partnerships and trusts.

## 16 Eligibility conditions

- (1) To be eligible for a grant, a person of a kind mentioned in section 15 must satisfy:
    - (a) the condition set out in subsection (2); and
    - (b) any other conditions prescribed by the rules.
  - (2) Unless the rules exclude the person from this subsection, the person must be either:
    - (a) ready to export eligible products; or
    - (b) both:
      - (i) exporting eligible products; and
      - (ii) seeking to expand the person's export promotion activity (within existing, or to new, export markets) for eligible products.
- Note: The rules define *ready to export*.
- (3) If the rules exclude a person from subsection (2), the rules must also prescribe one or more conditions that have the effect of requiring a connection between the person and the marketing of eligible products in a foreign country.
  - (4) Conditions prescribed by the rules for the purposes of paragraph (1)(b):
    - (a) may include a time at which, or a period during which, a person must satisfy the conditions; and
    - (b) may be different for different kinds of persons.

## **Division 4—Eligible products**

### **17 Eligible products**

- (1) A product prescribed by the rules, which satisfies the conditions prescribed by the rules for that product, is an *eligible product*.
- (2) Without limiting the products that may be prescribed by the rules, the rules may prescribe goods, services, events, intellectual property, software and know-how.
- (3) The prescribed conditions for a product must include conditions that have the effect of requiring the product to be of substantially Australian origin.

## **Division 5—Eligible expenses**

### **18 Eligible expenses**

- (1) The rules may prescribe an expense of a person that is an *eligible expense* of the person.
- (2) A prescribed expense of a person must be an expense of the person in respect of:
  - (a) promotional activities undertaken for the purpose of marketing eligible products in foreign countries; or
  - (b) training activities undertaken for the purpose of developing skills in marketing eligible products in foreign countries.
- (3) Despite subsection (1), an expense, or part of an expense, of a person is not an *eligible expense* of the person if a provision of this Division or the rules provides that the expense or part is excluded.

### **19 Excluded—expenses covered by other financial assistance schemes**

An expense of a person is excluded if the person has received financial assistance that covers the expense under a scheme for financial assistance (other than under this Act) administered by the Commonwealth or a State or Territory, or an authority of the Commonwealth or a State or Territory.

## Schedule 1 Main amendments

### Part 1 Amendments

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Note: If, after a grant is paid to a person in respect of an eligible expense of the person, the person receives financial assistance that covers the expense under another scheme, the person may be required by the rules or their grant agreement to repay the grant.

#### **20 Excluded—expenses in respect of products the sale or export of which would contravene Australian law**

An expense of a person is excluded if the expense is in respect of promotional or training activities related to a product the sale or export of which would contravene an Australian law.

### **Division 6—Amount of grant**

#### **21 Amount of grant**

- (1) The CEO of Austrade must determine the amount of a grant to be made to a person in accordance with the method prescribed by the rules.
- (2) The rules may prescribe different methods for different circumstances.
- (3) Rules made for the purposes of subsection (1) may apply in relation to grants, or instalments of grants, payable after the rules commence, including under a grant agreement in effect at the time the rules commence.

#### **6 Part 8 (heading)**

Repeal the heading.

#### **7 Divisions 1, 2 and 3 of Part 8**

Repeal the Divisions.

#### **8 Division 4 of Part 8 (heading)**

Repeal the heading, substitute:

### **Division 7—Review of decisions**

#### **9 Section 97**

Repeal the section, substitute:

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## **97 Reviewable decisions**

Each of the following decisions of the CEO of Austrade is a **reviewable decision**:

- (a) a decision under subsection 9(1) not to enter into a grant agreement with a person;
- (b) a decision under paragraph 11(1)(b) that a person is not eligible for a grant, or has not had or will not have eligible expenses in relation to eligible products;
- (c) a decision under paragraph 11(1)(c) that a requirement prescribed by the rules for the purposes of that paragraph is not met in relation to the payment of a grant or instalment;
- (d) a decision prescribed by the rules for the purposes of this paragraph.

## **10 Divisions 5, 6 and 8 of Part 8**

Repeal the Divisions, substitute:

## **Part 3—Information gathering powers**

### **100 Simplified outline of this Part**

The CEO of Austrade may require applicants and grantees to provide the CEO with information or documents. Grantees may also be required to give the CEO statements from time to time in relation to relevant matters.

Failure to comply may result in an application not being dealt with, or a grant or instalment not being paid. The provision of false or misleading information may be an offence against Chapter 7 of the *Criminal Code* (the proper administration of Government).

### **101 CEO of Austrade may require applicants to give the CEO information or documents**

- (1) The CEO of Austrade may, by written notice given to an applicant for a grant, require the applicant to give the CEO specified information, or produce specified documents, for the purposes of

determining whether to enter into a grant agreement with the applicant.

- (2) The notice must specify the day by which the information is to be given or the documents produced (which must be at least 14 days after the day the notice is given to the applicant).
- (3) The CEO is not required to deal with an application if the applicant fails to comply with the notice by the specified date, or any later date agreed to by the CEO.

## **102 CEO of Austrade may require grantees to give the CEO information or documents, or statements**

### *Information or documents*

- (1) The CEO of Austrade may, by written notice given to a grantee, require the grantee to give the CEO specified information, or produce specified documents, for the purposes of satisfying the CEO about a relevant matter in relation to the grant.
- (2) A notice under subsection (1) must specify the day by which the information is to be given or the documents produced (which must be at least 14 days after the day the notice is given to the grantee).
- (3) If:
  - (a) a grantee is required by a notice under subsection (1) to give the CEO information or produce a document; and
  - (b) the grantee does not do so by the specified date, or by any later date agreed to by the CEO;the CEO must not pay a grant, or any instalment of a grant, to the grantee.

### *Statements*

- (4) The CEO of Austrade may, by written notice given to a grantee, require the grantee to give the CEO one or more statements informing the CEO about specified relevant matters in relation to a specified grant, or specified instalment of a grant, to the grantee.
- (5) A notice under subsection (4) must specify when the statement or each statement is to be given (which, for the statement or the first

statement, must be at least 14 days after the day the notice is given to the grantee).

- (6) If:
- (a) a grantee is required by a notice under subsection (4) to give the CEO a statement in relation to a specified grant, or specified instalment of a grant; and
  - (b) the grantee does not do so when required, or as otherwise agreed to by the CEO;
- the CEO must not pay the grant, or the instalment, to the grantee.

*Relevant matters*

- (7) A **relevant matter** is any of the following:
- (a) whether a grantee is eligible for a grant, or has had or will have eligible expenses in relation to eligible products;
  - (b) whether grant money is used to meet agreed eligible expenses of a grantee in relation to eligible products;
  - (c) whether a grantee is otherwise complying with this Act, the rules and the grant agreement.

### **103 Part does not limit other powers**

This Part does not limit the making of rules, or the inclusion of terms and conditions in a grant agreement, requiring information or statements to be given or documents produced.

### **11 Division 9 of Part 8 (heading)**

Repeal the heading, substitute:

## **Part 4—Miscellaneous**

### **104 Simplified outline of this Part**

This Part deals with the following miscellaneous matters:

- (a) a cap on administration costs;
- (b) treatment of partnerships and trusts;
- (c) the making of rules by the Minister;

- (d) regular reviews of the assistance scheme provided for by this Act.

## 12 Section 106

Repeal the section, substitute:

### 105A Treatment of partnerships

- (1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.
- (3) An offence against Chapter 7 of the *Criminal Code* in relation to this Act that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership, at the time the offence was committed, who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).
- (4) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.
- (5) A reference in this section to this Act includes a reference to the rules.

### 105B Treatment of trusts

- (1) This Act applies to a trust as if it were a person, but with the changes set out in this section.
- (2) If the trust has a single trustee:
  - (a) an obligation that would otherwise be imposed on the trust by this Act is imposed on the trustee instead; and

- (b) an offence against Chapter 7 of the *Criminal Code* in relation to this Act that would otherwise have been committed by the trust is taken to have been committed by the trustee.
- (3) If the trust has 2 or more trustees:
  - (a) an obligation that would otherwise be imposed on the trust by this Act is imposed on each trustee instead, but may be discharged by any of the trustees; and
  - (b) an offence against Chapter 7 of the *Criminal Code* in relation to this Act that would otherwise have been committed by the trust is taken to have been committed by each trustee of the trust, at the time the offence was committed, who:
    - (i) did the relevant act or made the relevant omission; or
    - (ii) aided, abetted, counselled or procured the relevant act or omission; or
    - (iii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the trustee).
- (4) A reference in this section to this Act includes a reference to the rules.

## **106 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The rules may make provision for any matter by reference to a decision of the CEO of Austrade.
- (3) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;

**Schedule 1** Main amendments

**Part 1** Amendments

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- (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
- (e) directly amend the text of this Act.

**13 Subsections 106A(1A) and (1B)**

Repeal the subsections, substitute:

- (1A) The first review must be completed, and a written report given to the Minister, by a date determined by the Minister that is no later than the fifth anniversary of the commencement of Schedule 1 to the *Export Market Development Grants Legislation Amendment Act 2020*.
- (1B) Each subsequent review must be completed, and a written report given to the Minister, by a date determined by the Minister that is no later than 5 years after the completion of the previous review.

**14 Part 9**

Repeal the Part.

## **Part 2—Application, saving and transitional provisions**

### **15 Application and transitional provisions**

#### *Continued application of Acts as previously in force*

- (1) Despite the amendments made by this Schedule, the *Export Market Development Grants Act 1997* (the **EMDG Act**), and the *Australian Trade and Investment Commission Act 1985*, as in force immediately before this item commences, continue in force in relation to grants in respect of grant years ending on 30 June 2021 or earlier.

#### *Application of EMDG Act as amended*

- (2) The CEO of Austrade must not, before 1 July 2021, pay a grant in accordance with the EMDG Act as amended by this Schedule, but may otherwise perform functions and exercise powers under the EMDG Act as amended by this Schedule at any time after this item commences.

### **16 Saving provisions**

- (1) A delegation under paragraph 90(1)(a) of the *Australian Trade and Investment Commission Act 1985* that is in force immediately before this item commences continues in force (and may be dealt with) as if the delegation had been made under subsection 90(1) of that Act as amended by this Schedule.
- (2) A delegation under subsection 90(2) of the *Australian Trade and Investment Commission Act 1985*, of a function or power of the CEO under that Act, that is in force immediately before this item commences continues in force (and may be dealt with) as if the delegation had been made under subsection 90(2) of that Act as amended by this Schedule.

## Schedule 2—Administration costs

### *Export Market Development Grants Act 1997*

#### **1 Subsections 105(1) and (2)**

Omit “5%”, substitute “the applicable percentage”.

#### **2 At the end of section 105**

Add:

(3) The *applicable percentage* is the following:

- (a) for the financial year ending on 30 June 2021—7.5%;
- (b) for the financial year ending on 30 June 2022—7%;
- (c) for a financial year ending on or after 30 June 2023—5%.

#### **3 Subsection 107(1)**

Insert:

*applicable percentage* has the meaning given by subsection 105(3).

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[Minister’s second reading speech made in—  
House of Representatives on 7 October 2020  
Senate on 9 December 2020]

(125/20)

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