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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Export Market Development Grants
Amendment Bill 2001**

No. , 2001

(Foreign Affairs and Trade)

**A Bill for an Act to amend the *Export Market
Development Grants Act 1997*, and for related
purposes**

ISBN: 0642 457956

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1 **A Bill for an Act to amend the *Export Market***
2 ***Development Grants Act 1997, and for related***
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

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

8 **2 Commencement**

- 9 (1) Subject to this section, this Act commences on the day on which it
10 receives the Royal Assent.
- 11 (2) Parts 2 to 14 of Schedule 1 commence, or are taken to have
12 commenced, on 1 July 2001.

Schedule 1 Amendment of the Export Market Development Grants Act 1997
Part 1 Continuation of the export market development grants scheme

1 **3 Schedule(s)**

2 Subject to section 2, each Act that is specified in a Schedule to this
3 Act is amended or repealed as set out in the applicable items in the
4 Schedule concerned, and any other item in a Schedule to this Act
5 has effect according to its terms.

1
2 **Schedule 1—Amendment of the Export Market**
3 **Development Grants Act 1997**

4 **Part 1—Continuation of the export market**
5 **development grants scheme**

6 *Export Market Development Grants Act 1997*

7 **1 Subsection 106A(1)**

8 Omit “2000”, substitute “2005”.

9 **2 Subsection 106A(3)**

10 Omit “2000”, substitute “2005”.

11 **3 Section 107 (paragraph (a) of the definition of *grant year*)**

12 Repeal the paragraph, substitute:

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

1

2 **Part 2—Minimum expenses and minimum grants**

3 *Export Market Development Grants Act 1997*

4 **4 Paragraph 29(d)**

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

6 **5 Subsection 63(1)**

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

8 **6 After subsection 63(2)**

9 Insert:

10 (2A) If, after applying subsection (1) and subsection (2) (where
11 applicable), an applicant’s provisional grant amount for a grant
12 year is less than \$2,500, the applicant’s *provisional grant amount*
13 for the grant year is \$2,500.

14 **7 Paragraph 63(3)(a)**

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

1

2 **Part 3—Overseas representatives and consultants**

3 *Export Market Development Grants Act 1997*

4 **8 Section 32**

5 Omit “item 1”, substitute “item 1A”.

6 **9 Subsection 33(2) (table item 1)**

7 Repeal the item, substitute:

8

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
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

- 1 **10 Subsection 33(2) (table item 6)**
2 Repeal the item.

1

2 **Part 4—Promotional events**

3 *Export Market Development Grants Act 1997*

4 **11 Subsection 33(2) (table item 5)**

5

Repeal the item, substitute:

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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

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2 **Part 5—Grants entry requirements**

3 *Export Market Development Grants Act 1997*

4 **12 Subsection 22(2)**

5 Omit “of at least 28 days”.

1

2 **Part 6—Registration**

3 *Export Market Development Grants Act 1997*

4 **13 Paragraph 7(1)(h)**

5 Repeal the paragraph, substitute:

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

9 **14 Paragraph 7(4)(h)**

10 Repeal the paragraph, substitute:

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

14 **15 Division 5 of Part 3 (heading)**

15 Repeal the heading, substitute:

16 **Division 5—Grants entry requirements**

17 **16 Subsection 18(1)**

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

19 **17 Subsection 18(2)**

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

21 **18 Subsection 18(3)**

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

23 **19 Section 19**

24 Repeal the section.

25 **20 Subsection 20(1)**

26 Omit “Once the person has been registered,”.

- 1 **21 Paragraph 94(3)(c)**
2 Repeal the paragraph.

1

2 **Part 7—External services earnings for eligibility**
3 **purposes**

4 *Export Market Development Grants Act 1997*

5 **22 At the end of section 7**

6 Add:

7 *Relevant earnings for eligible external services*

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

13 **23 Subsection 10(1) (table item 3, column 3)**

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

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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)

1 Omit “supply”, substitute “sale”.

2 **35 Subsection 25(2)**

3 Repeal the subsection, substitute:

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

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

11 **36 Paragraph 37(d)**

12 Repeal the paragraph, substitute:

13 (d) if the applicant is not an approved body or an approved
14 trading house—eligible services that the applicant intends to
15 sell to persons that are not residents of Australia;

16 (da) if the applicant is not an approved body or an approved
17 trading house—eligible tourism services that the applicant
18 intends to sell, or has sold:

19 (i) to a person that is a resident of Australia; but

20 (ii) for sale by that resident, in the course of trade, to
21 persons that are not residents of Australia;

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

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Export Market Development Grants Act 1997

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37 Section 40 (table item 17)

6

Repeal the item, substitute:

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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

8

38 Section 57

9

Repeal the section, substitute:

10

**57 Expenses associated with publications, films and computer games
of certain classifications**

11

12

Publications, films and computer games that have been classified

13

(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:

14

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(a) a publication that has been classified RC, Category 2
restricted or Category 1 restricted by the Classification
Board; or

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18

19

(b) a film that has been classified RC or X by the Classification
Board; or

20

21

(c) a computer game that has been classified RC by the
Classification Board.

22

1 *Publications, films and computer games that have not been*
2 *classified*

- 3 (2) Expenses of an applicant are excluded if:
- 4 (a) they were incurred in respect of an eligible promotional
 - 5 activity carried out for an approved promotional purpose
 - 6 relating to a publication, a film or a computer game; and
 - 7 (b) the publication, film or computer game has not been
 - 8 classified by the Classification Board; and
 - 9 (c) Austrade has reason to believe that the publication, film or
 - 10 computer game will be classified as mentioned in
 - 11 subsection (1).

12 Note: For *Classification Board, computer game, film* and *publication* see
13 section 107.

14 **57A Expenses associated with prohibited or potential prohibited**
15 **Internet content**

16 Expenses of an applicant are excluded if they were incurred in
17 respect of an eligible promotional activity carried out for an
18 approved promotional purpose relating to Internet content that is:

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

21 Note: For *Internet content, potential prohibited content* and *prohibited*
22 *content* see section 107.

23 **57B Expenses associated with telephone sex services**

24 Expenses of an applicant are excluded if they were incurred in
25 respect of an eligible promotional activity carried out for an
26 approved promotional purpose relating to a telephone sex service.

27 Note: For *telephone sex service* see section 107.

28 **39 Section 107**

29 Insert:

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

1 **40 Section 107**

2 Insert:

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

5 **41 Section 107**

6 Insert:

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

9 **42 Section 107**

10 Insert:

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

13 **43 Section 107**

14 Insert:

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

17 **44 Section 107**

18 Insert:

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

21 **45 Section 107**

22 Insert:

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

25 **46 Section 107**

26 Insert:

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

1

2 **Part 10—Requirement for ABN**

3 *Export Market Development Grants Act 1997*

4 **47 After section 85**

5 Insert:

6 **85A Person without an ABN**

7 (1) Despite Subdivision 2, a grant, or an advance on account of a
8 grant, is not payable to a person if, at the time when, or at any time
9 after, the person becomes entitled to the grant or advance, the
10 person, or in the case of a joint venture, the nominated contact
11 person, does not have an Australian Business Number (ABN).

12 (2) Subsection (1) does not affect the validity of a payment of grant, or
13 of an advance on account of grant, to the person at a time when the
14 person had an ABN.

15 Note: For *ABN* see section 107.

16 **48 Section 107**

17 Insert:

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

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2 **Part 11—Providers of courses to overseas students**

3 *Export Market Development Grants Act 1997*

4 **49 At the end of Subdivision 3 of Division 3 of Part 7**

5 Add:

6 **87A Provider of course to overseas students is not registered**

- 7 (1) Despite Subdivision 2, a grant, or an advance on account of a
8 grant, is not payable to a person that provides a course to overseas
9 students who are in Australia if, at the time when, or at any time
10 after, the person becomes entitled to the grant or advance the
11 person is not a registered provider of that course.
- 12 (2) Subsection (1) does not affect the validity of a payment of grant, or
13 of an advance on account of grant, to the person at a time when the
14 person was a registered provider of the course.

15 Note: For *course*, *overseas student* and *registered provider* see section 107.

16 **50 Section 107**

17 Insert:

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

21 **51 Section 107**

22 Insert:

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

26 **52 Section 107**

27 Insert:

Schedule 1 Amendment of the Export Market Development Grants Act 1997
Part 11 Providers of courses to overseas students

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

1

2 **Part 12—Insolvency**

3 ***Export Market Development Grants Act 1997***

4 **53 Paragraph 7(1)(f)**

5 Repeal the paragraph.

6 **54 Subsection 7(1) (note)**

7 Omit “, *under insolvency administration*”.

8 **55 Paragraph 7(2)(c)**

9 Repeal the paragraph.

10 **56 Subsection 7(2) (note)**

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

13 **57 Subsection 7(3)**

14 Repeal the subsection, substitute:

15 *Approved trading house*

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

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

21 **58 Paragraphs 7(4)(e) and (f)**

22 Repeal the paragraphs.

23 **59 Subsection 7(4) (note)**

24 Omit “*under insolvency administration*”.

25 **60 Division 3 of Part 3**

26 Repeal the Division.

27 **61 Subsection 87(2) (note)**

1 Repeal the note, substitute:

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

4 **62 At the end of Division 3 of Part 7**

5 Add:

6 **Subdivision 4—Meaning of under insolvency administration**

7 **87B When is an individual under insolvency administration?**

8 An individual is *under insolvency administration* only if:

9 (a) the individual is in any of the following situations under the
10 *Bankruptcy Act 1966*:

11 (i) the individual is a bankrupt in respect of a bankruptcy
12 from which he or she has not been discharged;

13 (ii) property of the individual is subject to control under
14 section 50 or Division 2 of Part X of that Act;

15 (iii) the individual has, in the previous 3 years, executed a
16 deed of assignment or deed of arrangement under Part X
17 of that Act;

18 (iv) creditors of the individual have, in the previous 3 years,
19 accepted a composition under Part X of that Act; or

20 (b) the individual is in a situation of a kind referred to in
21 paragraph (a) under the law of an external Territory or a
22 foreign country.

23 Note: For *external Territory* and *foreign country* see sections 17 and 22
24 respectively of the *Acts Interpretation Act 1901*.

25 **87C When is a body corporate under insolvency administration?**

26 (1) Subject to subsection (2), a body corporate is *under insolvency*
27 *administration* only if:

28 (a) it is in any of the following situations under the Corporations
29 Law:

30 (i) the body corporate is being wound up;

31 (ii) there is a receiver, receiver and manager, or other
32 controller, of property of the body corporate who has

- 1 functions or powers in connection with managing the
2 body corporate;
- 3 (iii) the body corporate is under administration or official
4 management;
- 5 (iv) the body corporate has executed a deed of company
6 arrangement that has not yet terminated;
- 7 (v) the body corporate has entered into a compromise or
8 arrangement with another person and the administration
9 of the compromise or arrangement has not been
10 concluded; or
- 11 (b) the body corporate is in a situation of a kind referred to in
12 paragraph (a) under the law of an external Territory or a
13 foreign country.

14 Note: For *external Territory* and *foreign country* see sections 17 and 22
15 respectively of the *Acts Interpretation Act 1901*.

- 16 (2) Despite subsection (1), a body corporate that, apart from this
17 subsection, would be under insolvency administration is taken not
18 to be under insolvency administration if there is in force a
19 certificate given by the person administering the body corporate
20 stating that the body corporate is able to pay all its debts as and
21 when they become due and payable.

22 Note: For *person administering the body corporate* see subsection (3).

- 23 (3) In subsection (2):

24 *person administering a body corporate* means whichever of the
25 following has been appointed in relation to the body corporate:

- 26 (a) the liquidator or provisional liquidator of the body corporate;
- 27 (b) the receiver, receiver and manager, or other controller, of
28 property of the body corporate;
- 29 (c) the administrator, or the official manager, of the body
30 corporate;
- 31 (d) the administrator of the deed of company arrangement
32 executed by the body corporate;
- 33 (e) the administrator of any compromise or arrangement into
34 which the body corporate has entered;
- 35 (f) a person exercising, under the law of an external Territory or
36 a foreign country, the same functions and the same powers as
37 a person referred to in one of paragraphs (a) to (e).

1 **63 Section 107 (definition of *under insolvency***
2 ***administration*)**

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

1

2 **Part 13—Marketing visits**

3 *Export Market Development Grants Act 1997*

4 **64 Subsection 34(6)**

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

1

2 **Part 14—Reader's Guide diagrams**

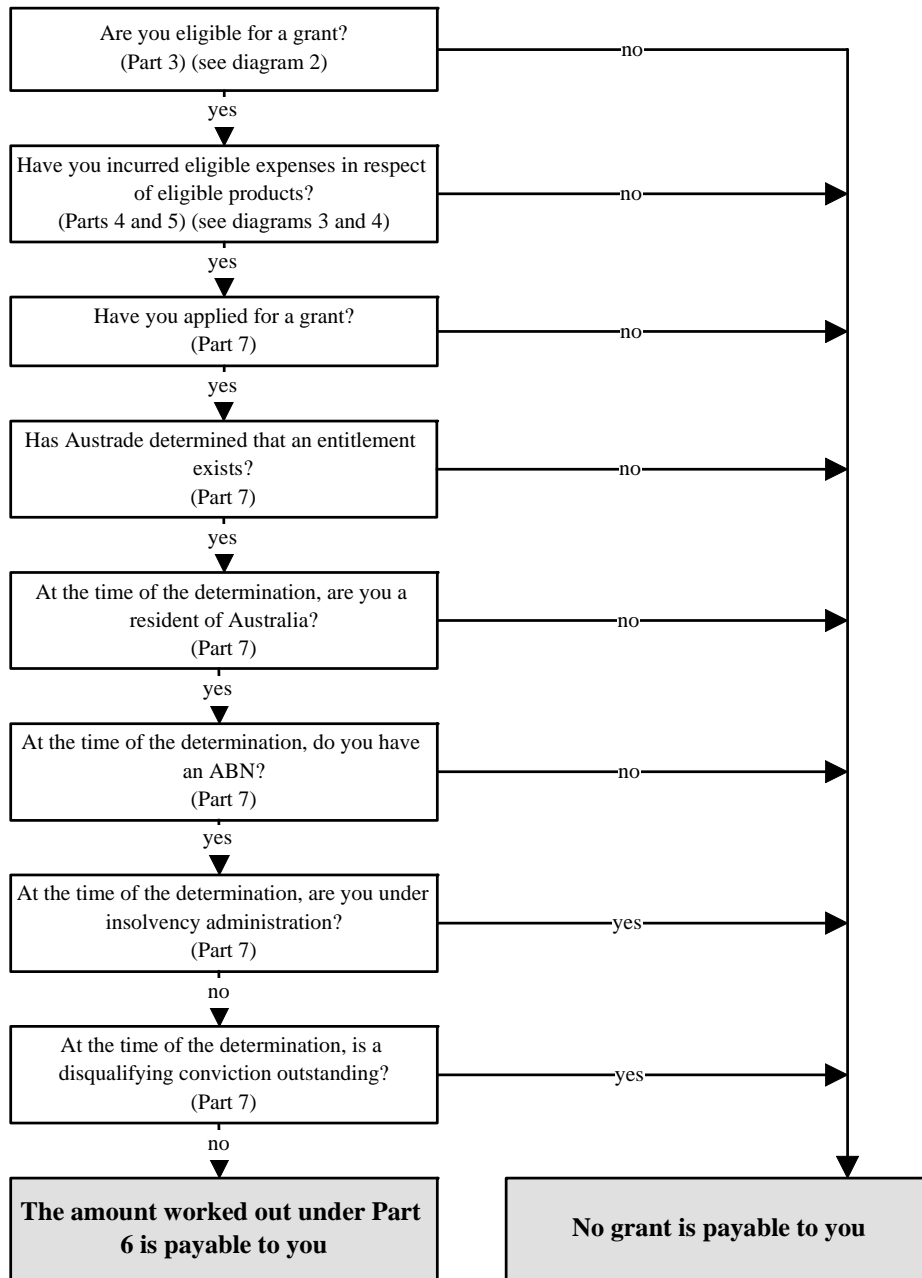
3 *Export Market Development Grants Act 1997*

4 **65 Diagrams 1 and 2 in the Reader's Guide**

5 Repeal the diagrams, substitute:

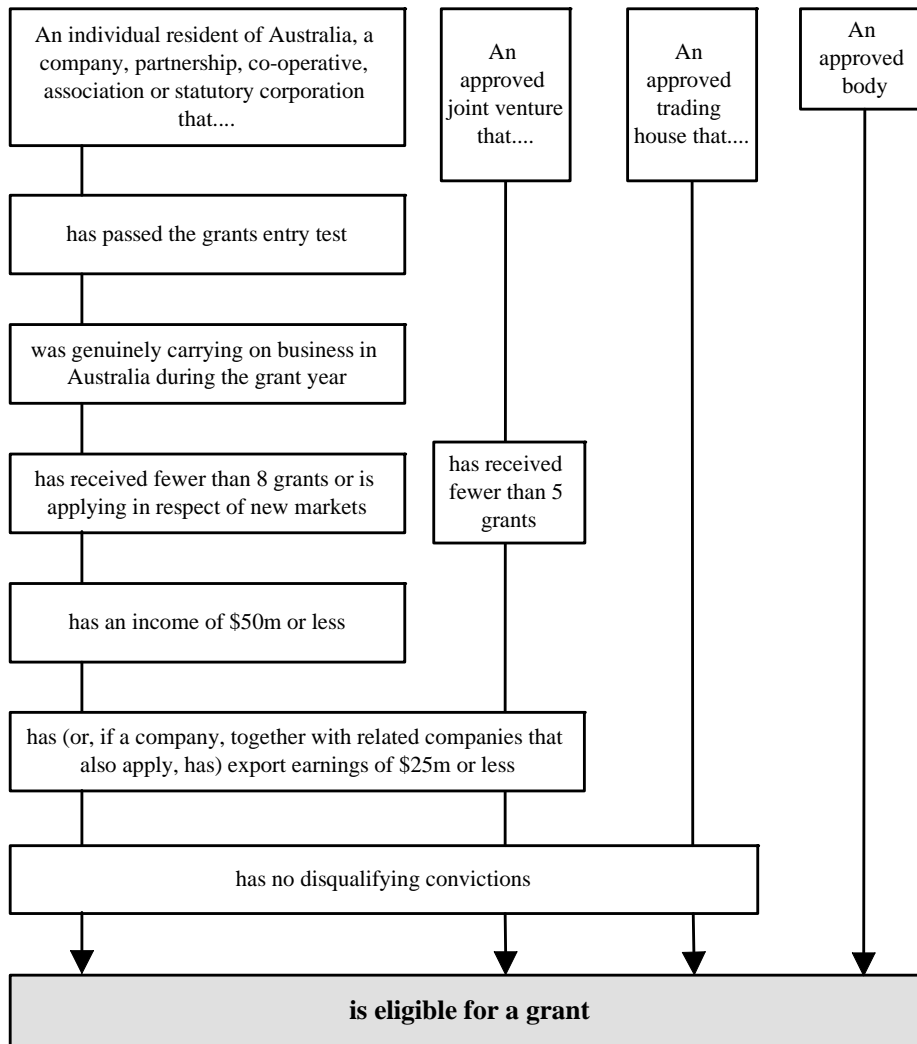
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Diagram 1—Is an amount of grant payable to you?
(Overview of Act)



4

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



4
 5 **66 Diagram 3 in the Reader's Guide (table item 4)**
 6

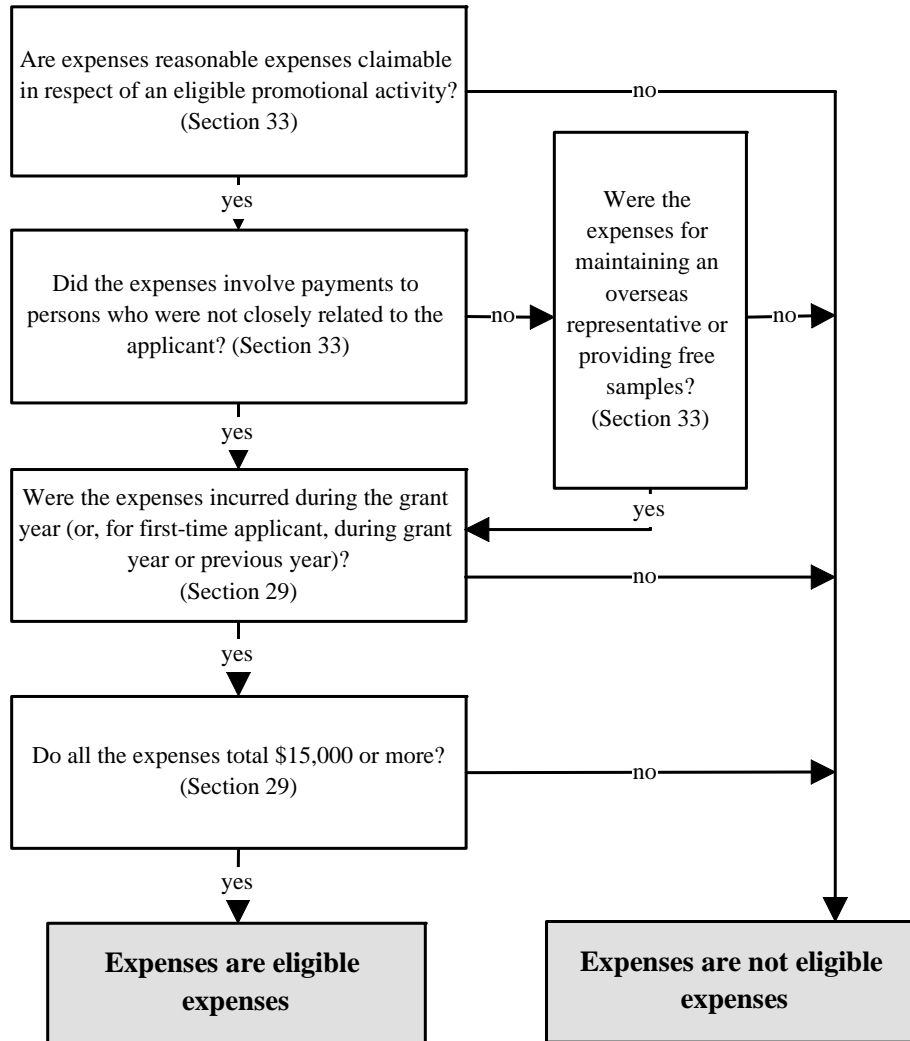
Repeal the item, substitute:

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

1 **67 Diagram 4 in the Reader's Guide**

2 Repeal the diagram, substitute:

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



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2 **Part 15—Application provisions**

3 **68 Application provision—Parts 2 to 8 and 12 to 14**

4 The amendments made by Parts 2 to 8 and 12 to 14 of this Schedule
5 apply in relation to a grant year that commences on or after 1 July 2001.

6 **69 Application provision—Part 9**

7 The amendments made by Part 9 of this Schedule apply to expenses
8 incurred on or after 1 July 2001.

9 **70 Application provision—Parts 10 and 11**

10 The amendments made by Parts 10 and 11 of this Schedule apply in
11 relation to a grant, or an advance on account of a grant, in respect of a
12 grant year that commences on or after 1 July 2001.