

2008-2009-2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EXPORT MARKET DEVELOPMENT GRANTS
AMENDMENT BILL 2010**

EXPLANATORY MEMORANDUM

(circulated by authority of the Minister for Trade, the Hon Simon Crean MP)

EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 2010

OUTLINE

The purpose of this bill is to amend the *Export Market Development Grants Act 1997* (the Act) to:

- extend the Export Market Development Grants (EMDG) scheme so that it applies to all grant years from 2011-12 to 2015-16 inclusive;
- reduce the maximum grant from \$200,000 to \$150,000;
- reduce the maximum number of grants available for an individual recipient (other than an approved body or an approved joint venture) from eight to seven;
- cap intellectual property registration expenses at \$50,000 per application;
- increase the minimum expenses threshold from \$10,000 to \$20,000;
- increase the income limit for members of approved joint ventures/consortia from \$30 million to \$50 million;
- remove approved trading houses as an eligible special approval applicant category;
- reinstate disqualifying conviction provisions in the Act that were unintentionally removed when *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* rules replaced earlier Act disqualifying conviction provisions;
- enable Austrade to impose conditions on the accreditation of EMDG consultants;
- amend the 'form and manner' requirements and claim lodgement deadlines for applications submitted by accredited EMDG consultants

FINANCIAL IMPACT

Expenditure under the act is set through annual Appropriation acts. A capping mechanism ensures that expenditure under the scheme is limited to the amount appropriated.

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ABBREVIATIONS

EMDG Act	<i>Export Market Development Grants Act 1997</i>
grant year	The year in which expenses are incurred by a grants applicant
Austrade	Australian Trade Commission
the scheme	The scheme of financial assistance to exporters covered by the <i>Export Market Development Grants Act 1997</i>

NOTES ON CLAUSES

- Clause 1 This Act may be cited as the *Export Market Development Grants Amendment Act 2010*.
- Clause 2 This Act commences on the day on which it receives Royal Assent.
- Clause 3 There is one Schedule amending the *Export Market Development Grants Act 1997*.

SCHEDULE 1—Amendment of the *Export Market Development Grants Act 1997*

PART 1- Main amendments

Items 1 & 2

These Items remove the approved trading house applicant category from the EMDG Act.

Item 3

The Act currently provides for applicants (except approved bodies, approved joint ventures and approved trading houses) to receive up to eight grants. This Item provides for applicants currently subject to the eight grant limitation to now be entitled to receive up to seven grants with no change to the rules for approved bodies and approved joint ventures.

Item 4

Refer Items 1 & 2

Item 5

Refer Item 3

Items 6 - 9

Refer to Items 1 & 2

Item 10

The Act currently provides for a \$10,000 minimum expenses threshold. This amendment Bill increases this amount to \$20,000

Item 11

The EMDG Act currently provides for the expenses of granting, registering or extending rights under foreign laws in relation to eligible intellectual property to be eligible for EMDG support – refer Item 8 of the Act's section 33 claimable expenses in respect of eligible promotional activities table. This Item limits the expenses claimable under Item 8 of this section 33 table to \$50,000 per grant year. Applicants claiming in their first grant year will be limited to \$50,000 expenses based on Item 8 of the section 33 table expenses that are incurred in the grant year and the immediately preceding year.

Items 12 – 16

Refer to Items 1 & 2

Item 17

Subsections 7(1)(c) and 7(4)(d) currently provide that EMDG applicants must earn income that is not greater than \$50,000,000 in the grant year. Subsection 53(1) of the Act currently provides that expenses of an approved joint venture are excluded if they are incurred by a joint venture member whose income in the grant year exceeds \$30,000,000. This Item aligns the income limit rule applying to joint venture members with the income limit rule applying to general EMDG applicants.

Items 18 & 19

Refer Item 10

Item 20

Refer Items 1 & 2

Item 21

Refer Item 10

Item 22

Under the current EMDG Act, all applicants except approved trading houses are entitled to receive up to \$200,000 per grant.

This Item reduces the maximum grant from \$200,000 to \$150,000. The current \$250,000 ceiling for the combined grants payable for members of related companies groups will not change.

Items 23 to 31

Refer to Items 1 & 2

Item 32

Section 106A of the EMDG Act currently provides for a Review of the scheme to be carried out and provided to the Minister not later than 30 June 2010. This Review has been completed, provided to the Minister and tabled in Parliament in accordance with this section of the Act.

This Item provides for an equivalent Review to be carried out and provided to the Minister not later than 30 June 2015.

Item 33

Refer to Items 1 & 2

Item 34

The *grant year* definition at section 107 of the EMDG Act currently provides that the last grant year for the scheme is 2010-11. This Item updates this definition so that all grant years from 2011-12 until 2015-16 inclusive are years for which EMDG grants can be paid.

Item 35

This Item provides that the Items 1 to 24 amendments of the *Export Market Development Grants Act 1997* in this amendment Bill apply to any grant year that commences on or after 1 July 2010.

PART 2 – Other amendments

Item 36

The EMDG Act currently requires that grant applicants and their associates should not be subject to relevant disqualifying conviction provisions at the time of applying for a grant and at the time of being entitled to receive a grant. These disqualifying conviction provisions are defined at section 16 of the EMDG Act.

In an earlier consequential amendment of the EMDG Act resulting from the passage of the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*, its former disqualifying conviction provisions based on *Crimes Act 1914* offences were replaced by *Criminal Code* offences. This 2000 amendment incorrectly omitted offences against sections 137.1 and 137.2 of the *Criminal Code* (formerly included in the *Crimes Act 1914*) in its cross referenced list of disqualifying conviction provisions. These sections relate to convictions of offences related to provision of false or misleading information and false or misleading documents.

This Item reinstates this offence in its list of relevant disqualifying conviction provisions offences.

Item 37

Under the current Act, all EMDG applicants must apply for grants within 5 months of the end of the grant year and be subject to ‘form and manner’ requirements – subsection 70(2) of the Act refers.

Section 100 of the current EMDG Act provides for a scheme for the accreditation of export market development grants consultants. No such scheme is currently in place.

Should an accreditation scheme for export market development grants consultants be set up, accredited consultants under the scheme may be granted a time extension for submitting their grant applicant clients’ applications beyond the normal deadline of lodgement within 5 months of the end of the grant year. This extension will only apply where the accredited consultant complies with the rules and circumstances contained in a legislative instrument to be made by the CEO of Austrade – refer Item 38.

Item 38

The CEO of Austrade may make a legislative instrument that specifies the rules required to be met by the accredited consultants in relation to their clients' applications. These rules might require, for example, that the accredited consultant formally advise Austrade within a defined period of the grant year of an intention to submit particular applications. This legislative instrument may also specify the additional number of months after the end of the grant year allowed for the making of EMDG applications.

Item 39

The same disqualifying conviction provisions referred to at Item 36 also apply to export market development grant consultants preparing applications on behalf of their clients – sections 74 to 78 of the current Act refer. The definition of relevant disqualifying conviction offences is updated as described at Item 36.

Item 40

Section 100 of the EMDG Act currently provides for a scheme for the accreditation of export market development grant consultants. No such scheme is currently in place.

To add certainty about what provisions may be included in such an accreditation scheme, Item 41 of this Bill broadens the accreditation framework by enabling the CEO of Austrade to make decisions imposing conditions on the accreditation of export market development grants consultants or varying or removing those conditions.

This Item provides that export market development grants consultants have appeal rights, including to the Administrative Appeals Tribunal, in relation to any decision under an accreditation scheme to impose conditions on the accreditation of a consultant or to vary those conditions.

Item 41

Section 100 of the EMDG Act currently provides for a scheme for the accreditation of export market development grant consultants. No such scheme is currently in place.

This Item broadens the accreditation framework by enabling the CEO of Austrade to make decisions imposing conditions on the accreditation of export market development grants consultants or varying or removing those conditions.

Item 42

Applicants that are convicted of particular offences or whose associates are convicted of these offences related to applications for an EMDG grant are required to repay to the CEO of Austrade any EMDG grant amounts that have been paid in respect of these applications – refer to current section 103 of the EMDG Act.

The particular offences are currently defined at paragraph 103(1)(a) of the EMDG Act.

In an earlier consequential amendment of the EMDG Act resulting from the passage of the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*, the former paragraph 103(1)(a) conviction provisions based on *Crimes Act 1914* offences were

replaced by *Criminal Code* offences. This 2000 amendment incorrectly omitted offences against sections 137.1 and 137.2 of the *Criminal Code* (formerly included in the *Crimes Act 1914*) in its cross referenced list of conviction provisions. These sections relate to convictions of offences related to provision of false or misleading information and false or misleading documents.

Item 43

The updated disqualifying conviction provisions described at Items 36 and 39 apply to grant applications made in respect of grant years commencing on or after 1 July 2010, regardless of whether the conviction of the offence against section 137.1 or 137.2 of the *Criminal Code* occurred before, on or after the commencement of this Item. Applications involving issues of relevant disqualifying conviction provisions in years prior to the 2010-11 grant year will not be affected by this amendment.

The Item 37 amendment relating to claims lodged by accredited export market grants consultants applies in relation to applications made after Royal Assent, that is, once consultants become accredited under an accreditation scheme.

The updated Item 42 conviction provisions will apply in relation to grants or advances paid by Austrade on or after Royal assent, regardless of whether the conviction of the offence against section 137.1 or 137.2 of the *Criminal Code* occurred before, on or after that commencement. This Item will not apply to any grants or advances paid by Austrade prior to Royal Assent.