

1999

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EXPORT MARKET DEVELOPMENT GRANTS LEGISLATION  
AMENDMENT BILL 1999**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Trade, The Hon Tim Fischer)

# **EXPORT MARKET DEVELOPMENT GRANTS LEGISLATION AMENDMENT BILL 1999**

## **PURPOSE AND OUTLINE OF THE BILL**

The purpose of this bill is to extend the EMDG scheme for a further two years to grant year 2000/2001, effect amendments to establish the original intention of a number of provisions of the *Export Market Development Grants Act 1997*, and provide for better administration of the grants scheme.

The bill effects the following amendments:

- ensures that where previously paid grants are to be disregarded, they are disregarded for all purposes under the Act;
- replaces the term "grants entry test" with "grants entry requirements";
- ensures that the requirement that an applicant be "genuinely carrying on business in Australia" is applicable to trusts;
- ensures that trusts have access to "new markets";
- ensures that regardless of the traveller, only 65% of first class airfares are claimable expenses;
- rectifies an incorrect reference to Austrade having the power to determine the "initial payment ceiling amount";
- replaces some illogical wording with respect to export earnings where they are adjusted by Austrade;
- removes the determination of the "initial payment ceiling amount" and the "balance distribution date" from the application of section 46A of the *Acts Interpretation Act 1901*;
- ensures that Austrade is unable to consider an application for grant lodged beyond five months after the end of a grant year;
- extends the grants scheme for two years to grant year 2000/2001;
- provides that an eligible applicant may receive three grants in respect of each "new market";
- allows Austrade to publicly provide the addresses of grants recipients and their industry sectors; and
- limits the life of all "approved body" to three years subject to extension upon review by Austrade.

## **FINANCIAL IMPACT**

Expenditure under the EMDG Act is capped through annual Appropriation Acts. The extension of the scheme to grant year 2000/2001 will cost \$150 million in each of the financial years 2000/2001 and 2001/2002. Given that the scheme is expected to be fully subscribed in future years, there are no costs or savings associated with the balance of the amendments. The amendments are not expected to generate any significant re-distribution of payments under the scheme.

## **ABBREVIATIONS**

The following abbreviations are used in this explanatory memorandum:

EMDG Act;	<i>Export Market Development Grants Act 1997.</i>
the Act;	do.
1974 Act;	<i>Export Market Development Grants Act 1974.</i>
EMDG(RCP) Act;	<i>Export Market Development Grants (Repeal and Consequential Provisions) Act 1997.</i>
ATC Act;	<i>Australian Trade Commission Act 1985.</i>
EMDG scheme;	the scheme of financial assistance to exporters covered by the <i>Export Market Development Grants Act 1974</i> and the <i>Export Market Development Grants Act 1997</i> .
the scheme;	as above.
BDD;	"balance distribution date".
IPCA;	"initial payment ceiling amount".
grant year;	the year in which expenses are incurred by a grants applicant.
Austrade;	Australian Trade Commission.

## **NOTES ON CLAUSES**

- Clause 1 This Act may be cited as the *Export Market Development Grants Legislation Amendment Act 1999*.
- Clause 2 The Act commences on the day on which it receives the Royal Assent.
- Clause 3 There are two schedules to this Act. Schedule 1 amends the EMDG Act. Schedule 2 amends the ATC Act and the EMDG(RCP)Act.

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

- Item 1 This amendment is a consequence of the amendment described at Item 8 which provides that exclusions to applicants' grants histories are consistently applied across the Act.
- Item 2 This amendment reflects the amendment described at Item 11 which changes the nomenclature of the "grants entry test" to "grants entry requirements".
- Item 3 As for Item 2.
- Item 4 The Act does not clearly provide for the application to trusts of the "genuinely carrying on business in Australia" test under paragraph 101(1)(a), and to which all other grants applicants are subject - refer to paragraph 7(1)(a). This is an unintended result which gives unfair advantage to trusts over other applicants. Item 4 applies the

"genuinely carrying on business in Australia" test to trusts. (Note that the test is not included under subsections 7(2) or 7(3) because the provision is embodied in ministerially approved guidelines empowered under paragraph 101(1)(c) in respect of "approved joint venture" and "approved trading house").

Item 5 This amendment is a consequence of the amendment described at Item 8 which provides that exclusions to applicants' grants histories are consistently applied across the Act.

Item 6 This item provides that the change in nomenclature from "grants entry test" to "grants entry requirements" described at Item 2 is applied to also include trusts.

Item 7 This amendment reflects the amendment described at Item 11 which changes the nomenclature of the "grants entry test" to "grants entry requirements".

Item 8 Section 8 of the Act provides that grants paid in certain circumstances do not count for the purposes of the general rules of eligibility under section 7. However, section 8 does not appear to provide for the exclusions to be applied consistently across the Act as was intended. For example, section 8 exclusions do not appear to be applicable to considerations of first time applicants for the purposes of claiming two years expenses (paragraph 29(c)(i)), or for the application of the "registration and grants entry test" (paragraph 18(1)(a)). Similarly, section 8 would appear not to be directly applicable when considering the export earnings test (subsection 63(3)) or "new markets" eligibility (subsection 50(1)). This amendment ensures that section 8 exclusions are applied in respect of each of the above matters, and any other circumstance where the number of grants received is an issue.

Item 9 Subsection 8(2) excludes trusts from access to the "new markets" provisions of the Act (refer section 113). This was not intended. This item provides trusts with the same access to "new markets" grants as other applicants.

Item 10 This amendment reflects the amendment described at Item 11 which changes the nomenclature of the "grants entry test" to "grants entry requirements".

Item 11 First time applicants for grant are required to be assessed against a set of criteria currently known as the "grants entry test", - sections 20, 21 and 22 refer. The "grants entry test" is a disallowable instrument established by Austrade determination. The use of the word "test" confuses applicants in that a significant number of applicants expect some kind of personal and formal review at their premises or at an Austrade office. This is not the case. Applicants are assessed on the basis of their written response to a list of topics

set down in Austrade guidelines established under section 21. It is thought that one unintended result of the use of the word "test" is that exporters are deterred from making application. This item alters the nomenclature from "grants entry test" to "grants entry requirements".

- Item 12 This item provides that guidelines covering the "grants entry test" established under the current legislation will remain in force under amended legislation until such time as the guidelines may be subsequently amended. That is, the current guidelines are applicable to all first time applicants for grant under either the current or amended legislation.
- Item 13 The current Act does not clearly establish, as is intended, that claimable expenses for first class airfares are limited to 65% of their cost for all purposes of the Act. The amendments effected by Items 13 and 14 clarify this matter.
- Item 14 Refer to comments at Item 13.
- Item 15 Subsection 68(1) provides that the minister must determine the "initial payment ceiling amount". The reference to "Austrade" in subsection 61(4) is, therefore, incorrect. This item rectifies this error.
- Item 16 This amendment is a consequence of the change effected by Item 22. The material provisions covered by section 64 are not intended to be altered by Item 16.
- Item 17 To ensure that grants paid do not exceed appropriated funds, an initial payment is made at the time of determination of a grant, with the outstanding amount pro-rated against remaining funds at the end of the year. The "balance distribution date" (BDD) is the date set each year by the Minister for Trade at which point in time outstanding grant balances must be reconciled against remaining funds. The BDD is currently a disallowable instrument. This date has to be variable to allow the distribution to occur at the earliest time possible following finalisation of the greater proportion of applications (95% is the current benchmark). How quickly Austrade can finalise 95% of applications depends largely on a mix of the number of applications, resources available and the quality of applications. Because of the variable workload, the minister is only able to set the BDD as the 95% mark is approached towards the end of each year. Once the BDD is determined, payment quickly follows to ensure completion by 30 June of that year. In these circumstances, distribution of balance grants is likely to occur before parliament has had an opportunity to consider the instrument, and subsequent disallowance would have no effect. However, were parliament to disallow the BDD prior to payment of grant balances, considerable disruption would ensue, as no grant

balances could be paid for six months because of the restrictions in the *Acts Interpretation Act 1901* on making a new determination.

The "initial payment ceiling amount" (IPCA) is the maximum amount of grant which successful applicants can receive immediately following assessment of their application by Austrade. Any amount of grant in excess of the IPCA may be paid after the BDD at the end of the year, depending upon funds remaining. The IPCA is, therefore, a matter of some judgement based upon knowledge of likely demand for grants in the following year. The IPCA is determined by the Minister for Trade and is currently a disallowable instrument. Were the IPCA to be disallowed by parliament, again disruption would ensue as no grants could be paid for six months until a follow-up instrument could be established. This would have a significant impact on exporters' capacity to promote overseas and on Australia's future export income.

Item 17 removes the IPCA and the BDD from the application of section 46A of the *Acts Interpretation Act 1901* and provides that the determinations be tabled in parliament within 15 sitting days after determination.

Item 18

Applications for grant under the EMDG scheme have, since the 1984/85 grant year, been required to be received by Austrade within five months of the end of a grant year with no further time allowed. It was intended that this rule be continued under the 1997 Act - refer to paragraph 70(2)(b). The use of the word "may" in the opening line of section 73, viz "Austrade may refuse to consider an application if: (a) the application is not in accordance with subsection 70(2) ....." is considered to provide possible grounds on which to challenge the rule that the five month cut-off is absolute. The prevention of late lodgement of applications is an issue of considerable importance to the administration of the scheme. This item is intended to remove any possibility that Austrade has the power to accept an application lodged subsequent to the conclusion of five months after the end of a grant year.

Item 19

Refer to comments at Item 18.

Item 20

Section 94 of the Act provides that the grants history of a particular business continues to apply regardless of any change of name or ownership. This is necessary to prevent, for example, a business which had received the maximum eight general grants from re-accessing the scheme and receiving a further eight grants. It is felt, however, that a business which has passed the grants entry test (sections 20 and 21 of the Act refer) at an earlier time under different ownership and is continuing with its business plan, should not have the grants entry test re-applied. Item 20 ensures that the grants entry test is not re-applied in these circumstances.

Item 21

Refer to comments at Item 11.

- Item 22 The words "apart from this section" in paragraph 96(d) are contrary to the intent of the section. The adjustment empowered by paragraph 96(d) is because of the section rather than separate from the section. Item 22 rectifies this error.
- Item 23 This amendment reflects the amendment described at Item 11 which changes the nomenclature of the "grants entry test" to "grants entry requirements".
- Item 24 Section 97 of the Act provides that certain decisions by Austrade are reviewable decisions. Austrade must review a decision upon the request of the applicant, and a person dissatisfied with a reviewed decision by Austrade may refer the matter to the Administrative Appeals Tribunal. Item 24 ensures that the amendment to section 97 effected by Item 23 does not alter the reviewable status of any decision made prior to amendment of the Act.
- Item 25 This item reflects the amendment at Item 4 which provides that the "genuinely carrying on business in Australia" provisions are applicable to trusts.
- Item 26 Guidelines to be applied in considering whether or not a grants applicant is "genuinely carrying on business in Australia" are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Item 26 provides that guidelines currently in force continue to have effect after amendment of the Act, and that section 46A may not be re-applied to the guidelines.
- Item 27 This amendment is a consequence of the amendment described at Item 8 which provides that exclusions to applicants' grants histories are consistently applied across the Act.
- Item 28 This amendment reflects the amendment described at Item 11 which changes the nomenclature of the "grants entry test" to "grants entry requirements".
- Item 29 As for Item 28.
- Item 30 The tenure of the EMDG Act is extended by two years to include grant years 1999/2000 and 2000/2001.
- Item 31 The wording of subsection 113(2) limits an applicant's "new market" grants to a maximum of three in total. The intention was that all applicants who have previously received eight grants should be eligible to receive up to three "new market" grants in respect of each applicable 'foreign country'. The amendment made by this item is intended to clarify original intention.

Item 32

With the exception of amendments made by Items 18 and 19 (late lodgement of applications for grant) and by Item 30 (extension of the grants scheme), the provisions of this amendment bill have effect commencing with grant year 1998/99.

**SCHEDULE 2 - Amendment of other legislation**

**Australian Trade Commission Act 1985**

Item 1

The secrecy provisions of the ATC Act limit the information which may be provided publicly concerning the payment of a grant to that of the name of the grant recipient and the amount of grant paid. It provides a balance between protecting commercially sensitive information and ensuring that the public has information on who receives taxpayer funded grants. This limitation is now viewed as too restrictive, a view which is supported by a number of industry organisations. This clause provides that in addition to the name of the grants recipient and the amount of grant paid, public release may also include the address of the recipient and their industry sector. This will help the public identify grants recipients without revealing any commercially sensitive information.

**Export Market Development Grants (Repeal and Consequential Provisions) Act 1997**

Item 2

Under the repealed 1974 Act, the life of "approved body" was unlimited unless cancelled by Austrade. There existed no finite and automatic date of expiry. Cancellation was generally limited to circumstances where the "approved body" had contravened a condition of its approval. The Act (1997) limits the life of "approved body" to three years with three year extensions at Austrade's discretion. Austrade continues to have the power to cancel where conditions of approval have been contravened. Both of these provisions are considered necessary to ensure performance of "approved body" whose existence under the scheme is purely on the basis that they assist third parties in their export efforts. However, due to the operation of the EMDG(RCP) Act, "approved body" brought into existence under the 1974 Act are not subject to the three year automatic expiry as intended. Item 2 ensures that all approved bodies are treated consistently and have a reasonable position balanced between the need for certainty and the need for ongoing performance against the objectives of the EMDG Act.



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