



## Export Market Development Grants Amendment Bill 2008

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## Export Market Development Grants Amendment Bill 2008

**Date introduced:** 20 March 2008

**House:** House of Representatives

**Portfolio:** Trade

**Commencement:** On Royal Assent

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

The Bill makes a range of amendments to the *Export Market Development Grants Act 1997* (the Act), to generally increase access to grants and grant money, under the Act.

### Background

The Export Market Development Grants Scheme (EMDG Scheme) was established in 1974 by the *Export Market Development Grants Act 1974*. The scheme is administered by the Australian Trade Commission (Austrade) and provides financial incentive in the form of a taxable grant which represents a partial reimbursement of promotional expenditure incurred in pursuit of exports. Grants are based primarily on expenditure incurred by Australian persons or companies seeking to create or expand exports of their products in overseas markets.<sup>1</sup>

### Basis of policy commitment

Reforms to the EMDG Scheme were first announced in December 2007, by the newly appointed Minister for Trade, the Hon Simon Crean MP. In his address to Diplomatic Corps, the Minister referred to the newly-elected Government's plans to 'strengthen and revitalise our trade facilitation programs, especially the Export Market Development Grants Scheme' as part of an overall effort to re-ignite export growth.<sup>2</sup>

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1. Lee Jones, 'Export Market Development Grants Bill 1997', *Bills Digest*, no. 118, Parliamentary Library, Canberra, 1996-97, p. 1.

2. The Hon Simon Crean MP, Minister for Trade, *Address to the Reception for the Diplomatic Corps*, Canberra, 3 December 2008, p. 2,

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In his second reading speech introducing the Bill, the Trade Minister outlined the Government's intention to conduct major reforms to Australia's trade policies and programs. The [announcement of a review of export policies and programs](#) ("the Mortimer Review") by the Minister enables the new Government to act quickly to generate new policy in regards to the EMDG Scheme. The last review of the scheme was conducted by Austrade in 2005, with amendments to implement recommendations from that review made by the *Export Market Development Grants Legislation Amendment Act 2006* along with an announcement from the then Trade Minister, the Hon Mark Vaile MP, that the Scheme would be extended until the end of 2010-11.<sup>3</sup>

Commencing earlier this year, the [Mortimer Review](#) is expected to incorporate a detailed examination of the EMDG Scheme. Therefore, if the scheme is to continue operation, it seems likely that there will be further major reforms to the Act.

In his second reading speech, the Minister referred to the amendments in the Bill as a 'down payment in the process of restoring trade policy settings to a more sustainable position' and 'a much needed boost to exporters by enabling business incurring eligible promotional expenses to claim grants under more generous assessment criteria'.<sup>4</sup> Overall, while the changes contain no significant major reforms, they widen the eligibility criteria as well as potentially increasing payments to successful applicants.

## Financial implications

The Explanatory Memorandum states that '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'.<sup>5</sup>

## Key issues

The major changes to note in the Bill are:

- An increase in the maximum grant by \$50,000, allowing successful applicants to receive up to \$200,000

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3. Jeffrey Robertson, 'Export Market Development Grants Legislation Amendment Bill 2006', *Bills Digest*, no. 124, Parliamentary Library, Canberra, 2005-06, p. 3.

4. The Hon Simon Crean MP, Minister for Trade, 'Second reading speech: Export Market Development Grants Amendment Bill 2008', House of Representatives, *Debates*, 20 March 2008, p. 1.

5. Explanatory Memorandum, Export Market Development Grants Amendment Bill 2008, p. 5.

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- Increasing the maximum turnover limit of eligible applicants from \$30 million to \$50 million, thus allowing more applicants into the Scheme
- Halving the minimum expenditure threshold of applicants, thus increasing eligibility, and
- Increasing the limit on grants receivable from 7 to 8, allowing applicants to access the Scheme for longer.

The Bill does limit accessibility to some extent, in the restoration of a performance measure for applicants claiming their third and subsequent EMDG grant. This performance measure was previously enforced by provisions in earlier versions of the Act (then known as the ‘export performance test’), but was removed by the former Government through legislative amendments in the *Export Market Development Grants Legislation Amendment Act 2006*.

The Explanatory Memorandum states that those applicants must elect one of two ways in which they can show that they meet the performance requirements:

- Option A, which involves a modified method of calculating an applicant’s grant entitlement with details included in a legislative instrument to be made by the Minister; or
- Option B, which requires applicants to meet an additional eligibility criterion (called the *Australian net benefit requirements*) to receive grants, through the provision of information and documents as specified in a legislative instrument to be made by the Minister.<sup>6</sup>

Although this information does not provide a substantial indication of how applicants will meet the performance requirements, the Explanatory Memorandum suggests that the instrument may prescribe factors such as ‘job creation, location of R&D activities, financial resources and/or economic benefits to Australia’, when determining whether an applicant meets the Australian net benefit requirement.<sup>7</sup>

In the Explanatory Memorandum to the 2006 Amendment Bill to the Act, the export performance test was described as follows:

Under the current EMDG Act, applicants are entitled to receive two EMDG grants regardless of whether they achieve any export sales. To receive a third and subsequent grants, applicants other than approved bodies and approved trading houses must

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6. *ibid*, p. 5.

7. *ibid*, p. 8

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achieve some export sales. This is because the formula for calculating grants limits the amount payable to a specified percentage of the applicant's export income.<sup>8</sup>

However, there was little explanation in that Explanatory Memorandum for the removal of the performance test:

This amendment bill removes all references to the export performance test from the Act and removes all supporting references to export earnings from the Act. This will remove some anomalies and inconsistencies associated with the test.<sup>9</sup>

The re-insertion of a performance measure appears to be a return to the status quo for the Scheme. However, it is noted that due to the lack of finer details in this Bill, and the use of statutory instruments in prescribing the details of the performance measure, it is currently unclear whether, in practice, the new performance measures will be substantially different from the former performance test.

## Main provisions

**Schedule 1** of the Bill provides general amendments. **Items 1 and 2** amend section 8 of the *Australian Trade Commission Act 1985*, which provides the functions of the CEO of the Australian Trade Commission (Austrade). The amendment extends the powers of the CEO to enable him or her to do things required or permitted by legislative instrument.

All other items amend the *Export Market Development Grants Act 1997*. A range of amendments to section 7 of the Act (**items 3 - 12**) make minor changes to the eligibility of people and joint ventures to grants under the Act. This includes an expansion of the income threshold for eligibility of individuals and trustees, from up to \$30 million to up to \$50 million. It also enables individuals and trustees to receive up to 8 grants in the EMDG scheme (previously the maximum was 7).

**Item 13** inserts **new sections 9 and 10** into the Act, to create a new performance measure for applicants (except approved bodies and approved trading houses, which are already subject to a separate and additional approval process under Part 8 of the Act.). If the applicant has received two grants, and is applying for a third and subsequent grant, the applicant must elect to use one of two methods to show the CEO that certain performance requirements are met in order to receive future grants. This new performance measure is called the *Australian net benefit requirements*. The Act does not elaborate on what the specific performance requirements are; **new section 10** enables the Minister to prescribe

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8. Explanatory Memorandum, Export Market Development Grants Amendment Bill 2006, p. 6.

9. *ibid*, p. 7.

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these requirements by legislative instrument.<sup>10</sup> Consequential amendments to these new provisions are contained in **items 31 - 34, and 36 - 38**.

Section 25 of the Act sets out the **eligible services** under the Act – those services for which an applicant is eligible for grants under the EMDG Scheme. The section currently distinguishes between *internal services* (services supplied to non-residents within Australia) and *external services* (services supplied to non-residents outside of Australia). The latter kind of services enjoys automatic EMDG eligibility, while only prescribed internal services are eligible under the scheme. **Items 14 - 21** amend the Act to abolish the differentiation between internal and external services, and insert a new reference to *non-tourism services*. If enacted, the Act will only distinguish between *tourism services* (a range of tourism-related services including passenger transport, food and beverage services and casino gambling) and *non-tourism services* (everything else). The amendments will provide that while all tourism services are automatically eligible if supplied to a person who is a non-resident of Australia, all non-tourism services are eligible unless specifically excluded by the Regulations.

Current section 29 sets out the requirements for *eligible expenses* incurred for a grant. Among other requirements, the expenses of the applicant must be at least \$15,000 within the grant year (with exceptions for those in their first grant year) for eligibility. **Item 22** reduces this amount of required expenses to \$10,000.

Section 33 contains a table of claimable expenses in respect of eligible promotional activities. **Item 23** adds two new claimable expenses to that table – expenses incurred in registration of intellectual property, and expenses incurred in obtaining insurance to protect the intellectual property. The inclusions have been drafted to discourage abuse of the section by applicants; the Explanatory Memorandum points out that ‘the claimable expenses will be limited to reasonable expenses incurred by the applicant in payments to persons that were not closely related to the applicant, and must be for an approved promotional purpose’.<sup>11</sup>

**Items 28 – 30** make minor amendments to the formula used for calculating an applicant’s provisional grant amount. Generally, the amendments increase access to reimbursements of eligible expenses. Most significant of the changes is **item 30**, which increases the maximum amount grantable (for non-trading house applicants) from \$150,000 to \$200,000.

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10. The Bill is silent on whether the legislative instruments to be created under the Act will be disallowable instruments. In the absence of an express statement, instruments are subject to the rules under the *Legislative Instruments Act 2003*. This includes mandatory registration of instruments, and tabling of instruments in Parliament, making them subject to the rules of disallowance under Part 5 of the LA Act.

11. Explanatory Memorandum, 2008, p. 9.

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**Item 35** clarifies that certain bodies corporate, that might represent:

- More than one industry, or
- Operations at a State/Territory or regional level, as well as those nationally,

are able to apply to the CEO of Austrade for approval as an approved body under the Act. This amendment ensures that those bodies corporate are not unintentionally prohibited from applying, by virtue of the Ministerial guideline *Guidelines for the approval, variation of approval, and cancellation of approved bodies* (which currently indicates that approved bodies should be peak bodies, representing the majority of businesses in an industry).<sup>12</sup>

**Items 47 – 56** make a range of consequential amendments to some tables and definitions contained in the Act.

**Item 57** provides that the amendments in the Bill (except items 1 and 2) take effect from the beginning of the grant year commencing 1 July 2008.

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12. *ibid*, p. 12.

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