A determination to be complied with by Austrade in determining, for the purposes of section 9 of the Export Market Development Grants Act 1997, whether a person meets the Australian net benefit requirements in relation to a grant year.

The Export Market Development Grants Act 1997 (EMDG Act) provides for grants to specified Australian businesses which have incurred specified expenses promoting the export of their Australian goods, services, intellectual property rights and know-how. The grant is a partial reimbursement of the expenses incurred.

Among other amendments, the Export Market Development Grants Act 2008 amended the Export Market Development Grants (EMDG) scheme rules to introduce a performance measure for applicants other than approved bodies and approved trading houses that have already received two grants. These applicants must make a choice between two options in terms of the amended section 70 of the EMDG Act. These two options (grants options A and B) provide alternative ways for these applicants to show that they meet the scheme’s performance requirements. The choice is mandatory and must be made at the time an applicant applies for a grant.

Applicants selecting grants option B must meet the Australian net benefit requirements introduced by way of section 9 of the amended EMDG Act. Section 9 of the EMDG Act requires the CEO of Austrade to decide whether applicants meet the Act’s Australian net benefit requirements.

Section 10 of the amended EMDG Act provides for a legislative instrument to be complied with by Austrade in determining whether applicants meet the Australian net benefit requirements.

The Export Market Development Grants (Australian Net Benefit Requirements) Determination 2008 (the 2008 Determination) was introduced in 2008 and has been applied to 2008-09 grant year applications.

Based on Austrade’s experience applying the 2008 Determination, this instrument is made in order to make the Australian net benefit requirements a simpler and more objective test for applicants. This amended Determination does not change the policy underpinning the EMDG scheme performance measure in general and the Australian net benefit requirements in particular.

Although this instrument is a machinery measure and does not substantially change the law, Austrade has consulted with other Government Departments in the course of its preparation. It has not consulted directly with industry because to do so would have provided undue commercial advantage to a limited number of individuals and organisations.
This instrument commences on the day after it is registered and it applies to applications made for the 2009-10 and following grant years.

Austrade’s decisions in relation to whether a person meets the Australian net benefit requirements are subject to review in the Administrative Appeals Tribunal.

This instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. 