EXPORT MARKET DEVELOPMENT GRANTS ACT 1997

Export Market Development Grants Legislation Amendment Determination 2010 (No. 1)

Explanatory Statement

Background:

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.

This Amendment Determination amends three legislative instruments that have been previously made under the EMDG Act.

There are three Schedules amending these legislative instruments.

Schedule 1 Amendments of Export Market Development Grants (Australian Net Benefit Requirements) Determination 2008

Among other amendments, the Export Market Development Grants Act 2008 amended the 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 under section 9 of the EMDG Act.

Section 10 of the amended EMDG Act provides for the making of 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 made by the Minister for Trade to be complied with by Austrade in deciding matters under section 9 of the EMDG Act.

Based on Austrade’s experience applying the 2008 Determination to 2008-09 grant year EMDG applications, the Export Market Development Grants (Australian Net Benefit Requirements) Amendment Determination 2010 (No. 1) (the 2010 Australian Net Benefit Requirements Determination) was made in order to make the Australian net benefit requirements a simpler and more objective test for applicants. This amended Determination did not change the policy underpinning the EMDG scheme performance measure in general and the Australian net benefit requirements in particular. It made the Determination’s requirements simpler and more objective.
During the drafting of the 2010 Australian Net Benefit Requirements Determination, the fact that the 2008 Determination should have continued to apply to applications received for 2008-09 grant year was overlooked. Schedule 1 of this Amendment Determination remedies this oversight.

**Schedule 2 Amendment of Export Market Development Grants (Export Performance Requirements) Determination 2008**

Among other amendments, the *Export Market Development Grants Act 2008* amended the 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.

Paragraph 63(3)(f) of the amended EMDG Act provides for the making of a legislative instrument by the Minister to be used to ascertain the grant amount for applicants that choose grants option A under the amended section 70 of the EMDG Act.

The *Export Market Development Grants (Export Performance Requirements) Determination 2008* (the 2008 Export Performance Requirements Determination) was made and is applicable to EMDG applications involving grants option A in the 2008-09 and following grant years.

The 2008 Export Performance Requirements Determination rules were closely based on the rules for the export performance test (EPT) that formerly applied under the EMDG scheme. This test was removed as part of the *Export Market Development Grants Legislation Amendment Act 2006* (the 2006 Amendment Act).

One rule formerly found at paragraph 10(3)(b) of the EMDG Act as it was prior to the passage of the 2006 Amendment Act excluding exports made to a foreign country declared by the Minister in writing to be subject to trade sanctions, was not included in the 2008 Export Performance Requirements Determination.

The amendments at Items 1 and 2 of Schedule 2 remedy this oversight and align the export earnings measurement EMDG rules with the expense eligibility EMDG rules as they relate to markets subject to trade sanctions. In practice, the amendments exclude any exports made by an EMDG applicant to any market declared by the Minister under section 44 of the EMDG Act to be subject to trade sanctions.

**Schedule 3 Amendment of Export Market Development Grants (Significant Net Benefit) Guidelines 2006**

Among other amendments, the *Export Market Development Grants Amendment Act 2006* amended the EMDG scheme’s rules, set out at section 24 of the EMDG Act, for determining the eligibility of goods.

The amended section 24 provided that, to be eligible:

(a) goods must be made in Australia; or
(b) Austrade must be satisfied that Australia will derive a significant net benefit from the sale of the goods outside Australia.

Paragraph 101(1)(baa) of the amended EMDG Act provided for ministerial guidelines to be complied with by Austrade in determining whether Australia will derive a significant net benefit from the sale of goods outside Australia.

The Export Market Development Grants (Significant Net Benefit) Guidelines 2006 (the 2006 Determination) was prepared to assist applicants to clarify whether their goods are likely to be eligible and to increase the transparency and accountability of Austrade’s decision-making about the eligibility of goods. The 2006 Determination has been applied to EMDG claims for the 2006-07 to 2008-09 grant years inclusive.

Based on Austrade’s experience applying the 2006 Determination, this instrument was amended by the Export Market Development Grants (Significant Net Benefit) Amendment Guidelines 2010 (No. 1) (2010 Significant Net Benefit Determination) in one minor respect. This amendment required that the generation of any substantial economic benefits for Australia, referred to at paragraph 4(2)(d) of the instrument, should be assessed having regard to whether the economic benefits are reasonably commensurate with the amount of grant claimed by the applicant.

During the drafting of the 2010 Significant Net Benefit Determination, the fact that the 2006 Determination should have continued to apply to applications received for 2008-09 grant year and earlier grant years was overlooked. Schedule 3 of this Amendment Determination remedies this oversight.

Consultation carried out in respect of measures in the legislative instrument

The amendments in Schedules 1 and 3 are machinery measures and do not substantially change the law. Austrade has not consulted with other entities in the course of preparing these amendments because they implement the policy implicit in the 2010 Australian Net Benefit Requirements Determination and the 2010 Significant Net Benefit Determination.

The amendment in Schedule 2 is also a machinery measure and does not substantially change the law. Austrade has not consulted with other entities in the course of preparing this amendment because it implements the policy implicit in the Export Market Development Grants Act 2008.

Commencement provision for the legislative instrument

This instrument commences on the day after it is registered.

Application provisions for the measures in the legislative instrument

Schedules 1 and 3 respectively confirm that the 2010 Australian Net Benefit Requirements Determination and the 2010 Significant Net Benefit Determination do not apply to EMDG applications made in respect of grant years starting before 1 July 2009.

The Schedule 2 amendment provides that its amendments do not apply to applications made in 2009-10 and prior grant years.
Review rights for decisions made under the legislative instrument

All decisions made under the amendments in the three Schedules in this instrument are subject to review in the Administrative Appeals Tribunal.

Other provisions

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.