

February 2010

INTELLECTUAL PROPERTY UPDATE:

New Government Grants Support Innovators of Intellectual Property

Overview

The Commonwealth Government's new grants program *Commercialisation Australia* which came into effect on 1 January 2010, provides new opportunities for innovators, businesses and researchers to receive financial assistance to support their intellectual property development and commercialisation and to protect their intellectual property. Under the program, companies or individuals can access between \$250,000 to \$2 million in repayable grants. Applications are now open for *Commercialisation Australia* funding. [\[1\]](#)

Furthermore, under changes to the existing *Export Market Development Grants*, exporters can obtain up to \$200,000 for export related intellectual property expenses, including overseas patent filing fees.

1. Commercialisation Australia Assistance Program

In **December 2009** the Federal Government introduced a new merits based grants program, administered by *Commercialisation Australia*, to provide financial assistance for the commercialisation of innovation. Grants are classed under 4 separate categories:

1. Skills and Knowledge support to help build skills, knowledge and connections required to commercialise new ideas;
2. Experienced Executives funding of up to \$200,000 over 2 years to engage an experienced CEO to give small innovative firms experienced executive management support;
3. Proof of Concept grants of \$50,000 to \$250,000 to test the commercial viability of a new product, process or service; and
4. **Early Stage Commercialisation** repayable grants of \$250,000 to \$2 million to develop a new product, process or service to the stage where it can be taken to market. [\[2\]](#)

1.1 Early Stage Commercialisation & Intellectual Property Expenditure

Innovative companies [\[3\]](#) can apply for a **repayable** Early Stage Commercialisation grant to cover various types of expenditure, including money spent on intellectual property protection. [\[4\]](#)

Successful applicants will be required to repay the grant as a percentage of sales income and/or company profits from the outcomes of the project, depending on the project's success and must be able to match the grant funding on a 50:50 basis.

Commercialisation Australia has released a 'Customer Information Guide' which outlines the detailed eligibility criteria and application process. [\[5\]](#) To be eligible for funding to cover Intellectual Property related expenditure,

applicants must show ownership of existing Intellectual Property; assistance is not available where Intellectual Property ownership is in dispute. [\[6\]](#)

Applicants can claim reasonable costs relating to Intellectual Property protection, including filing fees for lodging a patent application to a patent office, patent search and examination fee and annual patent maintenance fees incurred in Australia; funding does not extend to intellectual property protection costs incurred overseas. [\[7\]](#) Further, costs associated with registering a trademark or a registered design are usually considered commercialisation activities and are ineligible for funding. [\[8\]](#)

IP protection expenditure that can be claimed is limited to the lesser of 10 per cent of total eligible expenditure or \$200,000, except where an applicant obtains special approval *Commercialisation Australia*.

1.2 Application Process

Applicants should read the Customer Information Guide and are required to complete a "Pre-Application Form" as the first step in applying for *Commercialisation Australia* funding. Applicants will then be contacted to determine if they are suitable for funding, and will be provided with an application form. Successful applicants will be assigned a Case Manager to guide them through the commercialisation process and facilitate access to Volunteer Business Mentors who provide commercialisation support to applicants.

2. Export Market Development Grants

The Export Market Development Grant (EMDG) scheme is the Federal Government's major financial assistance program for Australian exporters and is administered by Austrade. EMDG reimburses up to 50% of expenses incurred on eligible export promotion activities above a \$10,000 threshold and provides up to 8 grants to each eligible applicant.

2.1 Eligible Export Promotion Activities & Intellectual Property Expenditure

Under changes to the EMDG scheme which came into effect from 1 July 2009, applicants can now claim for costs associated with patenting products overseas. [\[9\]](#) This includes:

- Payments made to third parties such as patent and trademark attorneys, for the grant, registration or extension of registration of Intellectual Property for countries other than Australia or New Zealand; and
- Cost of insurance premiums paid for protection against possible infringement in countries outside Australia. [\[10\]](#)

2.2 Eligible Applicants

Any Australian individual, partnership, company association, co-operative, statutory corporation or trust that has carried on export promotion activities during the year for which they wish to apply for a grant, is an eligible applicant. [\[11\]](#) Eligible businesses must have income less than \$50 million in the grant year, incurred at least \$10,000 of eligible export expenses under the scheme and have principal status for the export business. [\[12\]](#) To access the scheme for the first time, businesses should register their intention to apply for a grant with *Austrade* and will receive an application kit. In order to enter the scheme, applicants must have spent \$10,000 over two years on eligible export marketing expenses.

The maximum grant available is \$200,000; applications for 2009/10 will open 1 July 2010.

Stephens Lawyers & Consultants have a high level of expertise in intellectual property law, undertakes IP audits and develops strategies for the protection and management of IP assets.

Our lawyers represent leading companies in both litigious and commercial matters. For further information contact:

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[1] Commercialisation Australia Pre-Application forms are now available at:
<http://www.commercialisationaustralia.gov.au/AboutUs/News/Pages/preapp.aspx>.

[2] *Department of Innovation, Industry, Science and Research*, 'Commercialisation Australia'
<http://www.innovation.gov.au/Section/Innovation/Pages/CommercialisationAustralia.aspx>.

[3] Individuals who would like to be eligible for *Commercialisation Australia* funding without forming a company can apply through an eligible partner entity. An eligible partner entity is a body corporate whose primary purpose is to assist individuals or companies in commercialising their ideas; the partner entity must first be approved by Commercialisation Australia before the individual can submit an application. For more information please visit: *Commercialisation Australia*. 'Eligible Partner Entity' available at:
<http://www.commercialisationaustralia.gov.au/Apply/Pages/ResearchersandIndividuals.aspx>.

[4] *Commercialisation Australia*, 'Fact Sheet: Early Stage Commercialisation repayable grants' available at: <http://www.commercialisationaustralia.gov.au/WhatWeOffer/EarlyStageCommercialisation/Documents/Early%20Stage%20Commercialisation%20Fact%20Sheet.pdf>.

[5] *Commercialisation Australia*, 'Customer Information Guide' available at: <http://www.commercialisationaustralia.gov.au/Apply/Documents/Commercialisation%20Australia%20Customer%20Information%20Guide.pdf>.

[6] *Commercialisation Australia*, 'Customer Information Guide', at 2.3 **Access to IP** pg 7.

[7] *Commercialisation Australia*, 'Customer Information Guide', at Appendix 3, 2.1 **Overseas Activities** pg 28.

[8] *Commercialisation Australia*, 'Customer Information Guide', at Appendix 3, 1.5 **Intellectual Property Protection Expenditure** pg 28.

[9] *Austrade*, 'Changes to the EMDG scheme', at <http://www.austrade.gov.au/default.aspx?FolderID=1436>.

[10] *Austrade*, 'What can you claim? EMDG Eligible Expenses', <http://www.austrade.gov.au/What-can-you-claim/default.aspx>.

[11] *Austrade*, 'Who can apply for EMDG?', at <http://www.austrade.gov.au/Who-can-apply/default.aspx>.

[12] *Austrade*, 'Who can apply for EMDG?', at <http://www.austrade.gov.au/Who-can-apply/default.aspx>.