



Export Market Development Grants (Export Performance Requirements) Determination 2008¹

Export Market Development Grants Act 1997

I, JOHN MURPHY, Parliamentary Secretary to the Minister for Trade, make this Determination under paragraph 63 (3) (f) of the *Export Market Development Grants Act 1997*.

Dated 2008

Parliamentary Secretary to the Minister for Trade

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Part 1 Preliminary

1.1 Name of Determination

This Determination is the *Export Market Development Grants (Export Performance Requirements) Determination 2008*.

1.2 Commencement

This Determination commences on 1 July 2008.

1.3 Definitions

In this Determination:

Act means the *Export Market Development Grants Act 1997*.

export earnings has the meaning given by section 2.1.

related entity has the meaning given by subsection 37 (4) of the Act.

Section 1.3

sell has the meaning given by section 109 of the Act.

Note The following terms used in this Determination are defined in section 107 of the Act:

- approved activity, project or purpose
- approved joint venture
- approved trading house
- Austrade
- disposal
- eligible event
- eligible expenses
- eligible goods
- eligible intellectual property
- eligible know-how
- eligible non-tourism service
- eligible products
- eligible tourism service
- event holder
- export
- grantee
- grant year
- income
- person
- related company group
- resident of Australia
- supply.

Section 2.1

Part 2 Export earnings

2.1 Export earnings of an applicant

- (1) Subject to subsections (3), (4) and (5), the *export earnings* of an applicant is the sum of the applicant's relevant earnings for eligible products in the grant year.
- (2) In the following table:
- (a) eligible products are described in column 2 of an item; and
 - (b) relevant earnings are worked out using column 3 of an item.

Item	Eligible products	Relevant earnings
1	Eligible goods: <ol style="list-style-type: none"> (a) made in or outside Australia; and (b) exported by the applicant from Australia; and (c) sold by the applicant at any time to a person that is not a resident of Australia 	The amount or value of the consideration received during the grant year for the sale and export of the goods that is attributable to the free on board value of the goods
2	Eligible goods: <ol style="list-style-type: none"> (a) made in or outside Australia; and (b) not exported from Australia; and (c) sold outside Australia by the applicant to a person that is not a resident of Australia 	The amount or value of the consideration received during the grant year for the sale of the goods.
3	An eligible non-tourism service sold at any time by the applicant to a person that is not a resident of Australia	The amount or value of the consideration received during the grant year for the sale of the service less the amount of the consideration that is, in Austrade's opinion, paid or payable outside Australia in relation to the service
4	An eligible event marketed by the applicant under a written contract between the applicant and the event holder	The amount or value of the consideration received by the event holder during the grant year for: <ol style="list-style-type: none"> (a) the sale of goods to persons attending the event, who are not residents of Australia; and (b) services in connection with the event (including participation in the event)

Section 2.1

Item	Eligible products	Relevant earnings
5	An eligible tourism service sold by the applicant: <ul style="list-style-type: none"> (a) to an inbound tour operator who is a resident of Australia; and (b) for sale by the inbound tour operator, in the course of trade, to a person that is not a resident of Australia 	20% of the amount or value of the consideration received during the grant year for the sale of the service to the inbound tour operator
6	An eligible tourism service sold at any time by an applicant who is an inbound tour operator to a person that is not a resident of Australia	80% of the amount or value of the consideration received during the grant year for the sale of the service
7	An eligible tourism service sold at any time by an applicant who is not an inbound tour operator to a person that is not a resident of Australia	The amount or value of the consideration received during the grant year for the sale of the service
8	Eligible intellectual property or eligible know-how disposed of at any time by the applicant, being a disposal mentioned in section 111 of the Act	The amount or value of the consideration received during the grant year for the disposal

- (3) Any consideration for the sale, supply or disposal of an eligible product in the following circumstances is to be disregarded in working out the export earnings of the applicant:
- (a) a sale, supply or disposal of an eligible product in the course of trade with New Zealand;
 - (b) if the applicant is a member of an approved joint venture — a sale, supply or disposal of an eligible product that relates directly to the approved activity, project or purpose of the joint venture.
- (4) In working out the export earnings of an applicant that has applied for a grant in the capacity of trustee of a trust estate, disregard any earnings of the applicant that are not derived from the business carried on for the trust estate.
- (5) In working out the export earnings of an applicant who:
- (a) has applied for a grant in the applicant's own right; and
 - (b) is also a trustee, or a beneficiary, of a trust estate;
- disregard any earnings of the applicant from the business carried on for the trust estate.
- (6) For item 2 of the table in subsection (2), if the goods are exported from one country to another, the amount or value of the consideration is the free on board value of the goods from the country of delivery.

Section 2.2

2.2 Export earnings of approved joint venture

Subject to section 2.3, the *export earnings* of an approved joint venture for a grant year are the sum of the export earnings of all members of the joint venture whose income for the grant year is not more than \$50 000 000, excluding any export earnings of a member that:

- (a) are not for the approved activity, project or purpose of the joint venture; or
- (b) were earned at a time during the grant year when the member was not a resident of Australia.

2.3 Export earnings — adjustments by Austrade

If the amount of export earnings for an applicant for a grant year is adjusted under subsection 96 (3) of the Act, the adjusted amount is taken to be the applicant's export earnings for the grant year.

Note The CEO of Austrade may make decisions of an administrative character under section 96 of the Act.

2.4 Seller taken to export eligible goods in certain circumstances

If:

- (a) an applicant (*seller*) sells eligible goods at a time when the goods are in Australia; and
 - (b) the buyer later exports the goods;
- the seller (not the buyer) is taken to export the goods.

2.5 Export earnings of related entity

If:

- (a) an applicant that is incorporated under the *Corporations Act 2001* incurs expenses of promoting export sales for a related entity; and
- (b) the applicant includes the expenses in a claim for an export market development grant;

the amount of export earnings of the related entity, which is attributable to the promotion of export sales by the applicant, is taken to have been earned by the applicant.

Part 3 Provisional grant amount

3.1 Provisional grant amount — grantee for 3 or more grant years

- (1) This section applies to an applicant, other than an approved body or approved trading house, that is a grantee for 3 or more grant years (including the grant year in respect of which the calculation is being made).
- (2) Subject to subsection 63 (4) of the Act, the applicant's provisional grant amount for the grant year is the lesser of the following amounts:
 - (a) the amount that would be the applicant's provisional grant amount under subsection 63 (1), (2) or (2A) of the Act if this section did not apply to the applicant;
 - (b) the amount obtained by multiplying the applicant's export earnings for the grant year by the percentage applicable to the applicant in column 3 of the following table.

Relevant percentage

Item	Number of grant years for which applicant is a grantee	Percentage
1	3	40
2	4	20
3	5	10
4	6	7.5
5	7	5
6	8	5

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.