



Export Market Development Grants (Associate and Fit and Proper Person) Guidelines 2004

I, MARK VAILE, Minister for Trade, make these Guidelines under paragraph 101 (1) (bb) of the *Export Market Development Grants Act 1997*.

Dated 30 June 2004

MARK VAILE
Minister for Trade

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Section 1.1

Part 1 Preliminary**1.1 Name of Guidelines**

These Guidelines are the *Export Market Development Grants (Associate and Fit and Proper Person) Guidelines 2004*.

1.2 Commencement

These Guidelines commence on the date of their notification in the *Gazette*.

1.3 Definitions

In these Guidelines:

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

director has the meaning given by the *Corporations Act 2001*.

executive officer has the meaning given by the *Corporations Act 2001*.

relative has the meaning given by section 107 of the Act.

Note The definition of *relative* in section 107 of the Act refers to a 'spouse', which is also defined in that section.

responsible officer, of a corporation or other entity, means an individual:

- (a) who is an executive officer or director of the corporation or other entity; or
- (b) who holds 10% or more of the voting shares in the corporation or other entity; or
- (c) according to whose directions, instructions or wishes the body corporate is, or the directors of the corporation or other entity are:
 - (i) accustomed to act; or
 - (ii) under a formal or informal obligation to act.

voting share has the meaning given by the *Corporations Act 2001*.

Part 2 Guidelines about associates

2.1 Purpose of Part 2

For subparagraph 101 (1) (bb) (i) of the Act, this Part sets out the guidelines to be complied with by Austrade in determining who is an associate of a person for subsection 87AA (1) of the Act.

2.2 Associates

- (1) Austrade must determine that a person is an associate of an individual if the person is:
 - (a) a relative of the individual; or
 - (b) a person or body (however described) that participates in managing or conducting the affairs of the individual's business to which a grant to the individual would relate; or
 - (c) a member of a person or body (however described) that participates in managing or conducting the affairs of the individual's business to which a grant to the individual would relate.
- (2) Austrade must determine that a person is an associate of a body corporate if the person is:
 - (a) a responsible officer of the body corporate; or
 - (b) a relative of a responsible officer of the body corporate.
- (3) Austrade must determine that a person is an associate of an association, co-operative or partnership if the person is:
 - (a) a member of the association, co-operative or partnership; or
 - (b) a relative of an individual who is a member of the association, co-operative or partnership; or
 - (c) a body corporate that is a member of the association, co-operative or partnership; or
 - (d) a responsible officer of a body corporate that is a member of the association, co-operative or partnership; or
 - (e) a person or body that participates in managing or conducting the affairs of the association, co-operative or partnership; or
 - (f) a member of a person or body (however described) that participates in managing or conducting the affairs of the association, co-operative or partnership.

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- (4) Austrade must determine that a person is an associate of a body corporate mentioned in paragraph 6 (1) (g) of the Act if the person is:
- (a) a member of the body corporate; or
 - (b) a relative of an individual who is a member of the body corporate; or
 - (c) a person or body (however described) that participates in managing or conducting the affairs of the body corporate; or
 - (d) a member of a person or body (however described) that participates in managing or conducting the affairs of the body corporate.
- (5) Austrade must determine that a person is an associate of an approved joint venture if the person is:
- (a) a member of the joint venture; or
 - (b) an associate of a member of the joint venture because of subsection (1), (2), (3) or (4).
- (6) Austrade must determine that a person is an associate of an approved trading house if the person is:
- (a) a member of the approved trading house; or
 - (b) an associate of:
 - (i) the approved trading house; or
 - (ii) a member of the approved trading house; because of subsection (1), (2), (3) or (4).

Part 3 Guidelines about fit and proper persons

3.1 Purpose of Part 3

For subparagraph 101 (1) (bb) (ii) of the Act, this Part sets out the guidelines to be complied with by Austrade in forming, for subsection 87AA (1) of the Act, an opinion whether a person or any associate of the person is a fit and proper person to receive a grant.

3.2 Convictions

Austrade must have regard to whether the person or associate has been convicted of an offence under Australian law or a law of a foreign country.

Note Under sections 85ZV and 85ZW of the *Crimes Act 1914*, Austrade must not have regard to a conviction that is a spent conviction.

3.3 Other proceedings

Austrade must have regard to whether:

- (a) a civil penalty has been imposed on the person or associate under Australian law or a law of a foreign country; or
- (b) an administrative sanction has been imposed on the person or associate under Australian law or a law of a foreign country; or
- (c) the person or associate is involved in proceedings which may result in:
 - (i) a civil penalty being imposed on the person or associate under Australian law or a law of a foreign country; or
 - (ii) an administrative sanction being imposed on the person or associate under Australian law or a law of a foreign country; or
- (d) the person or associate has been the subject of a comment or assessment, by
 - (i) a court; or
 - (ii) a statutory or private tribunal; or
 - (iii) a body responsible for the regulation of an industry or profession; that Austrade is satisfied is critical of the person or associate; or
- (e) the person or associate is the subject of other proceedings, under Australian law or a law of a foreign country, before:
 - (i) a court; or
 - (ii) a statutory or private tribunal; or
 - (iii) a body responsible for the regulation of an industry or profession; in which a comment or assessment critical of the person or associate may be made.

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3.4 Insolvency administration

Austrade must have regard to whether the person or associate is, or has been, under insolvency administration.

Note Sections 87B and 87C of the Act explain when an individual or a body corporate is under insolvency administration.

3.5 Commercial performance

Austrade must have regard to:

- (a) whether the person or associate has been:
 - (i) a responsible officer of a business that has failed; or
 - (ii) otherwise in control of a business that has failed; and
- (b) the circumstances in which the business failed, including the person's or associate's conduct.

3.6 Other matters

Austrade must have regard to any matter, not mentioned in section 3.2, 3.3, 3.4 or 3.5, that it considers relevant to the personal, commercial, financial or professional status or reputation of the person or associate.