



# Export Market Development Grants (Close Relationships — General) Determination 2002

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I, MARK ANTHONY JAMES VAILE, Minister for Trade, make this Determination under paragraph 101 (1) (b) of the *Export Market Development Grants Act 1997*.

Dated 20 June 2002

MARK VAILE  
Minister for Trade

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## 1 Name of Determination

This Determination is the *Export Market Development Grants (Close Relationships — General) Determination 2002*.

## 2 Commencement

This Determination commences on 1 July 2002.

## 3 Definitions

In this Determination:

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

*entity* means a person or an applicant mentioned in paragraph 101 (1) (b) of the Act.

*related corporation* means a related corporation within the meaning of section 50 of the *Corporations Act 2001*.

#### 4 Revocation and savings

- (1) The Determination made under paragraph 101 (1) (b) of the Act on 1 July 1997 is revoked.
- (2) However, that Determination continues to apply to an application for a grant in respect of a grant year commencing before 1 July 2001.

#### 5 Purpose of Determination

This Determination sets out guidelines for Austrade to comply with in forming an opinion, for Division 5 of Part 3 of the Act, whether an entity is, or is not, closely related to another entity.

#### 6 General principle

In forming an opinion whether an entity is, or is not, closely related to another entity, Austrade must consider:

- (a) any connection between the entities; and
- (b) the extent of any control or influence the entity can exercise over the other entity.

#### 7 Being closely related

Without limiting section 6, an entity is likely to be closely related to another entity if:

- (a) the entity is ordinarily employed by the other entity; or
- (b) the entity is a company and the other entity is:
  - (i) a director of the company or a related corporation; or
  - (ii) a substantial shareholder of the company or a related corporation;or
- (c) the entity is an association or a cooperative and the other entity is a member of the body that governs, manages or conducts the affairs of the association or cooperative; or
- (d) the entity is a partnership and the other entity is a partner or, if any of the partners is a company, a director of the company or a related corporation; or
- (e) both entities are corporations and someone is a director of both of them; or
- (f) the entity is a beneficiary of a trust and the other entity is the trustee.

#### 8 Extended meaning of *ordinarily employed*

- (1) A person is taken to be ordinarily employed by an entity if:
  - (a) the person performs work that benefits the entity directly or indirectly; and

- (b) Austrade is satisfied that the relationship between the person and the entity may reasonably be taken to be equivalent to employment, having regard to the following matters:
- (i) whether the person regularly performs work at the premises of the entity;
  - (ii) whether the person regularly uses business facilities provided by the entity;
  - (iii) whether the entity exercises control over the work performed by the person;
  - (iv) whether the person is a former employee of the entity or of an associate of the entity;
  - (v) whether the person performs work for any other entities;
  - (vi) whether the person is employed by another entity that has more than 1 employee performing services for the entity;
  - (vii) whether the person performs work that has a specified outcome;
  - (viii) any other relevant matters.
- (2) Without limiting subsection (1), a person may be taken to be ordinarily employed by an entity even though the person is employed, or the person's services are otherwise supplied, by a corporation that agrees to provide that person's services to the entity.