

## EXPORT MARKET DEVELOPMENT GRANTS ACT 1997

### **Export Market Development Grants (Associate and Fit and Proper Person) Amendment Guidelines 2011 (No. 1)**

#### **Explanatory Statement**

**Guidelines to be complied with by Austrade in determining, for the purposes of section 87AA of the *Export Market Development Grants Act 1997* (the EMDG Act), whether a person is not a fit and proper person to receive a grant; or whether the person has an associate who is not a fit and proper person to receive a grant.**

#### **Background:**

This Amendment Determination amends the *Export Market Development Grants (Associate and Fit and Proper Person) Guidelines 2004* (the 2004 Guidelines) made under the EMDG Act.

The 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.

The *Export Market Development Grants Amendment Act 2004* (the 2004 Amendment Act) amended the EMDG Act by introducing a 'not fit and proper person' test, to be applied by Austrade in accordance with Ministerial guidelines when assessing entitlement to payment of an EMDG grant.

The EMDG Act provides that a grant to which an applicant is otherwise entitled is not payable if certain provisions of the Act apply. These provisions include sections 85 to 87A, which specify that grants are not payable if the applicant is not a resident of Australia, does not have an Australian Business Number, has outstanding disqualifying convictions, is under insolvency administration, or is the provider of courses to overseas students and is not a registered provider of that course.

The 2004 Amendment Act provided that, in addition to the above conditions, a grant to which an applicant is otherwise entitled is not payable if, in accordance with Ministerial guidelines, Austrade determines that the applicant or an associate of the applicant is 'not fit and proper' to receive a grant.

As required under paragraph 101(1)(bb) of the Act, the 2004 Guidelines were made to provide the rules to be complied with by Austrade:

- in determining who is an associate of a person, for the purposes of the 'not fit and proper' provision; and
- in forming an opinion whether a person or any associate of the person is a fit and proper person to receive a grant.

Section 3.6 of the 2004 Guidelines states that 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.

Austrade's experience administering the 2004 Guidelines has shown that there is some doubt as to whether they allow Austrade to consider matters which are not in the public domain. This is particularly relevant in those cases where Austrade has evidence of false or misleading information or statements by an applicant or by its associate in the course of the application for a grant, (including in some circumstances admissions of this conduct by the applicant and or its associate).

This amended instrument remedies any potential doubt by enabling Austrade to take account of material that is relevant to determining the professional character of the applicant or its associate, in addition to their status or reputation, for the purposes of making determinations under section 87AA of the EMDG Act.

### **Consultation arrangements**

Austrade has not consulted with other entities in the course of preparing this amendment because the change is minor and clarifies the 2004 Guidelines by removing any doubt about how they should be applied in cases where Austrade considers material not in the public domain.

### **Commencement provision for the legislative instrument**

This instrument commences on the day after it is registered.

### **Review rights for decisions made under the legislative instrument**

Austrade's decisions in relation to whether a person meets the Australian net benefit requirements are subject to internal review and to review in the Administrative Appeals Tribunal.

### **Other provisions**

This instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.