



Export Market Development Grants Regulations 2008

Select Legislative Instrument 2008 No. 140 as amended

made under the

Export Market Development Grants Act 1997

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Regulation 1.1

Part 1 Preliminary**1.1 Name of Regulations** [see Note 1]

These Regulations are the *Export Market Development Grants Regulations 2008*.

1.2 Commencement

These Regulations commence on 1 July 2008.

1.3 Repeal

The Export Market Development Grants Regulations are repealed.

1.4 Definition

In these Regulations:

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

Note The following terms used in these Regulations are defined in section 107 of the Act:

- approved activity, project or purpose
- approved body
- approved joint venture
- approved trading house
- Austrade
- balance distribution date
- events promoter
- grant year
- person.

Part 2 Payout factor

2.1 How to work out payout factor

- (1) In this regulation:
following year means the financial year after the grant year.
- (2) For subsection 69 (1) of the Act, the payout factor is the lesser of 1 and the amount worked out using the formula:

$$\frac{\text{Appropriation} - (\text{Grants paid} + \text{Administration costs})}{\text{Grants assessed} - \text{Ceiling amounts}}$$

where:

appropriation is the amount mentioned for payments under the Act in an Act to appropriate money out of the Consolidated Revenue Fund for the following year.

grants paid is the amount paid for grants from 1 July in the financial year to the balance distribution date (inclusive).

administration costs is the amount required for the administration of the Act for the following year.

grants assessed is the sum of provisional grant amounts assessed in the following year for applications made for the grant year.

ceiling amounts is the sum of grants paid from 1 July in the following year to the balance distribution date (inclusive) for applications made for the grant year.

Regulation 3.1

Part 3 Applications for approval — bodies

3.1 Dealing with an application

For subsection 89 (1) of the Act, the CEO of Austrade must deal with an application for approval as an approved body using the procedures set out in this Part.

3.2 Questions by Austrade

- (1) Austrade may ask the applicant written questions about the application.
- (2) The applicant's answers must be given to Austrade in writing.

3.3 Assessment of application

- (1) In assessing an application for approval as an approved body under section 88 of the Act, the CEO of Austrade must be satisfied that the body complies with subregulation (2).
- (2) The body must:
 - (a) be one of the following:
 - (i) a national non-profit industry organisation;
 - (ii) a State or Territory non-profit industry organisation;
 - (iii) a regional non-profit industry organisation; and
 - (b) represent all members of an industry, or members making up a substantial part of an industry; and
 - (c) be unable to distribute income to members or shareholders; and
 - (d) not export products, unless exporting is an ancillary part of the body's activities; and
 - (e) operate for the benefit of third parties; and
 - (f) be capable of undertaking promotional activities; and
 - (g) engage in promotional activities that:
 - (i) promote Australian products internationally; and

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- (ii) are for the benefit of an industry rather than for the benefit of individual members; and
- (iii) are commercially and financially feasible; and
- (h) generate, or be capable of generating, from its promotional activities, significant net benefit to Australia in two or more of the following areas:
 - (i) export earnings;
 - (ii) employment in Australia;
 - (iii) new capital investment in Australia;
 - (iv) introduction of new technologies in Australia;
 - (v) new value-added operations in Australia; and
- (i) have a promotional plan.

Note The CEO of Austrade must consider the *Export Market Development Grants (Approved Body) Guidelines 2008* when dealing with an application for approval as an approved body under section 88 of the Act.

3.4 Circumstances in which CEO of Austrade must not give approval

The CEO of Austrade must not give an approval of a body as an approved body if:

- (a) the body has been formed either:
 - (i) primarily as a grants funding agent for its members; or
 - (ii) primarily for the purpose of obtaining the approval; or
- (b) in the opinion of the CEO there is a high level of duplication of the promotional activities of another body operating in the same industry; or
- (c) approval would result in a disproportionate level of funding to an industry.

3.5 Variation of approval

- (1) The CEO of Austrade may vary the approval of an approved body:
 - (a) on application by the body; or

Regulation 3.6

- (b) if the body has failed to satisfy one or more of the requirements mentioned in subregulation 3.3 (2).
- (2) The CEO of Austrade may vary the approval by:
- (a) changing a condition of the approval; or
 - (b) adding or revoking a condition.

3.6 Cancellation of approval

The CEO of Austrade may cancel an approval given to an approved body if the approved body has failed to satisfy:

- (a) one or more of the requirements mentioned in subregulation 3.3 (2); or
- (b) a condition mentioned in the approval.

Part 4 Applications for approval — joint ventures

4.1 Dealing with an application

For subsection 89 (1) of the Act, the CEO of Austrade must deal with an application for approval as an approved joint venture using the procedures set out in this Part.

4.2 Questions by Austrade

- (1) Austrade may ask the applicant written questions about the application.
- (2) The applicant's answers must be given to Austrade in writing.

4.3 Variation of approval

- (1) The CEO of Austrade may vary the approval of an approved joint venture on application by the approved joint venture.
- (2) The CEO of Austrade may vary the approval for an approved joint venture by:
 - (a) changing the description of the group's membership; or
 - (b) changing the nominated contact member; or
 - (c) changing the specification of the approved activity, project or purpose; or
 - (d) changing a condition of the approval; or
 - (e) adding or revoking a condition.

Regulation 5.1

Part 5 Applications for approval — trading houses

5.1 Dealing with an application

For subsection 89 (1) of the Act, the CEO of Austrade must deal with an application for approval as an approved trading house using the procedures set out in this Part.

5.2 Questions by Austrade

- (1) Austrade may ask the applicant written questions about the application.
- (2) The applicant's answers must be given to Austrade in writing.

5.3 Variation of approval

- (1) The CEO of Austrade may vary the approval of an approved trading house on application by the approved trading house.
- (2) The CEO of Austrade may vary the approval for an approved trading house by:
 - (a) changing the specification of the approved activity, project or purpose; or
 - (b) changing a condition of the approval; or
 - (c) adding or revoking a condition.

Part 5A Applications for approval — grant years ending on or before 30 June 2008

5A.1 Applications for approval — grant years ending on or before 30 June 2008

Despite Part 3, and for a grant year ending on or before 30 June 2008, the CEO of Austrade must consider an application for approval as an approved body in accordance with:

- (a) the Export Market Development Grants Regulations as in force immediately before 1 July 2008; and
- (b) the Export Market Development Grants Act 1997 – Guidelines for the approval, variation of approval, and cancellation of approved bodies (1/1997 AB) as in force immediately before 1 July 2008.

Regulation 6.1

Part 6 Services**6.1 Tourism service**

For the definition of *tourism service* in section 107 of the Act, each service mentioned in Schedule 1 is prescribed.

6.2 Services that are not non-tourism services

For paragraph (b) of the definition of *non-tourism service* in section 107 of the Act, a service mentioned in Schedule 2 is specified.

6.3 Services for grant years ending on or before 30 June 2008

- (1) Despite regulations 6.1 and 6.2, and for a grant year ending on or before 30 June 2008:
 - (a) for the definition of *external service* in section 107 of the former Act:
 - (i) a service, including a legal service, is not an external service if it relates to:
 - (A) the sale or purchase of an estate or interest in real or leasehold property in Australia; or
 - (B) an enforceable option to purchase an estate or interest in real or leasehold property in Australia; or
 - (C) a financial transaction relating to a transaction mentioned in sub-subparagraph (A) or (B); or
 - (D) proceedings or action relating to migration to Australia, including proceedings or action to enter or remain in Australia; and
 - (ii) a legal service is not an external service if it relates to:
 - (A) proceedings under the *Family Law Act 1975*; or

Regulation 6.3

- (B) proceedings or action relating to the adoption, custody or welfare of a child; or
 - (C) proceedings or action relating to the maintenance of a person (except under a deed, trust or will); and
- (b) for the definition of *internal service* in section 107 of the former Act, each service mentioned in Schedule 1 to the former Regulations is an internal service; and
 - (c) for the definition of *tourism service* in section 107 of the former Act, each service mentioned in Schedule 2 to the former Regulations is a tourism service.
- (2) In subregulation (1):

former Act means the Act as in force immediately before 23 June 2008.

former Regulations means the Export Market Development Grants Regulations as in force immediately before 1 July 2008.

Schedule 1 Tourism services

(regulation 6.1)

1 Tourism services

Each of the following is a tourism service:

- (a) passenger transport by land:
 - (i) including vehicle hire; but
 - (ii) not including a transfer service for a person visiting Australia solely or partly as a tourist;
- (b) passenger transport by water;
- (c) passenger transport by air;
- (d) accommodation for at least 1 night, other than accommodation for foreign residents studying or working in Australia;
- (e) a tour;
- (f) admission to a place, for which payment is required to enter, of any of the following kinds:
 - (i) a place that has 1 or more outstanding natural features or is of historical interest;
 - (ii) a park, nature reserve or botanical garden;
 - (iii) a wildlife sanctuary or zoological garden;
 - (iv) a museum, art gallery or craft centre;
 - (v) a place that is, or provides, an amenity appropriate to tourists; or
 - (vi) an event, unless there is an event promoter engaged to promote the event;
- (g) a service at a place, the principal purpose of which is to provide a venue and associated facilities for meetings, conventions and exhibitions;
- (h) a service provided by a restaurant;
- (i) a service directly related to the act of gambling in a place licensed as a casino under an Australian law.

Schedule 2 **Services that are not non-tourism services**

(regulation 6.2)

1 **Services that are not non-tourism services**

Each of the following is a service other than a non-tourism service:

- (a) a service relating to migration to Australia, including proceedings or actions to enter or remain in Australia;
- (b) a service relating to:
 - (i) the adoption, custody or welfare of a child; or
 - (ii) proceedings about the maintenance of a person, except under a deed, trust or will; or
 - (iii) proceedings under the *Family Law Act 1975*;
- (c) a service relating to the identification, procurement, lease, sale or purchase of assets in Australia (whether tangible or intangible), including cash, real estate, stocks, options or shares;
- (d) a service relating to the protection, operation or maintenance of assets held in Australia;
- (e) a service relating to compliance with the laws of Australia;
- (f) a service relating to prostitution;
- (g) a service relating to pornographic material, including pornographic material in publications, films, computer games or accessible on the Internet;
- (h) a service relating to illegal activities or illegal products;
- (i) a gambling service provided by a service provider not licensed under an Australian law;
- (j) a service not mentioned in Schedule 1 that is provided to a foreign resident tourist in Australia;
- (k) a service related to providing accommodation for foreign students studying or working in Australia;
- (l) a service related to selecting or recruiting foreign students to work in Australia.

Table of Instruments

Notes to the *Export Market Development Grants Regulations 2008***Note 1**

The *Export Market Development Grants Regulations 2008* (in force under the *Export Market Development Grants Act 1997*) as shown in this compilation comprise Select Legislative Instrument 2008 No. 140 amended as indicated in the Tables below.

Table of Instruments

| Year and Number | Date of FRLI registration | Date of commencement | Application, saving or transitional provisions |
|------------------------|----------------------------------|-----------------------------|---|
| 2008 No. 140 | 27 June 2008 (see F2008L02258) | 1 July 2008 | |
| 2008 No. 150 | 21 July 2008 (see F2008L02606) | 22 July 2008 | — |

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---------------------------|---------------------|
| Part 5A | |
| Part 5A..... | ad. 2008 No. 150 |
| R. 5A.1..... | ad. 2008 No. 150 |
| Part 6 | |
| R. 6.3..... | ad. 2008 No. 150 |
