

INFORMATION FOR EXPORT MARKET DEVELOPMENT GRANTS (EMDG) CONSULTANTS

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INTRODUCTION

Consultants play an important role in supporting Australia's current and future exporters by promoting awareness of the Export Market Development Grants (EMDG) scheme, lodging applications on behalf of businesses and supporting the assessment process.

This publication provides information for current and prospective EMDG Consultants. It outlines what EMDG Consultants can expect when dealing with Austrade, and in turn, Austrade's expectations of EMDG Consultants.

EMDG APPLICATION LODGEMENT PERIOD

The EMDG application period opens on 1 July each year and ends at midnight Australian Eastern Daylight Time (AEDT) on 30 November. This closing date applies to all self-lodging applicants and to all consultants who have not been approved to participate in the Quality Incentive Program (QIP) for that year.

Extended lodgement for approved QIP consultants is available until the end of February in the following year. Consultants must apply separately to participate in the QIP. Page five of this guide provides more information on how to apply for the QIP.

APPLYING TO BE AN EMDG CONSULTANT

If you wish to prepare and submit a claim on behalf of another person, entity or company you must first register to be an EMDG Consultant. To do this you will need to complete and sign the *Consultant Application Form* available at the end of this document, and email it to Austrade at emdg.help@austrade.gov.au. Once your application is approved Austrade will send you an EMDG Consultant Code. Consultants will also need an AUSkey to access the online application form. If you do not have an AUSkey, you can obtain one from the Australian Business register: www.abr.gov.au/auskey

While there are no specific requirements or scheme of accreditation that you must meet in order to become an EMDG consultant, Austrade's expectations of EMDG Consultants are detailed on page three of this guide.

LODGING EMDG APPLICATIONS

Once you have your AUSKey and your EMDG Consultant Code you can access the online application form from the [Austrade website](#). EMDG applications can only be lodged online.

You will only be able to access the online application form from 1 July until 30 November each year, unless you are a QIP consultant. QIP consultants have access to extended lodgement until the end of February the following year.

Consultants will be prompted to login with their AUSKey and will be directed to an authentication webpage. When you have completed these steps, you will be able to input your AUSKey password and gain access to start an application for a client.

Austrade's publication [A Guide to Applying](#) outlines the information required for the application and how to input the data.

The online application form for consultants has functionality that is different to that for self-prepared applicants. In addition to your own contact details, consultants must always disclose the applicant's contact details.

RESOURCES FOR EMDG CONSULTANTS

There are a number of [online resources](#) available to EMDG consultants.

- [Coaching Videos](#) – Austrade has produced a series of short videos on the EMDG scheme and the expenditure categories.
- Scheme information:
 - › The [Export Market Development Grants Act 1997](#) (the EMDG Act)
 - › [EMDG Legislative Instruments and Regulations](#) – these instruments underpin the operation of the EMDG Act.
 - › [A Guide to Applying for EMDG](#) – includes an eligibility checklist, detailed information on how to answer each question in the online application form and guides to what can be claimed on each schedule (expense category)
 - › EMDG [Guide to Record Keeping](#)
- Guidance material for:
 - › [Goods not made in Australia](#)
 - › The [EMDG Performance Measure](#)
 - › [Approved Body Requirements](#)
 - › [Approved Joint Venture Requirements](#)
- Guidelines
 - › [EMDG Administrative Guidelines](#) – an explanation of Austrade's interpretation of the EMDG Act and how it is applied in the administration of the scheme. It includes examples to illustrate key factors considered in our decisions

Consultants can also contact Austrade by email on emdg.help@austrade.gov.au or on 13 28 78 with their queries. Where possible, Austrade will provide references to the EMDG Act and guidelines that may assist consultants in evaluating the eligibility of an applicant or their expenses. Austrade will not provide binding advice as it may not have all the relevant facts available to it.

CONSULTANT'S INVOLVEMENT IN THE ASSESSMENT PROCESS

In assessing an EMDG claim, Austrade will review the application, supporting documentation and publically available information. Some applications will also be subject to telephone interview or a visit to the applicant's premises.

Consultants will be kept informed at key points in the process so you can support the applicant as you see fit. This can include the preparation of additional supporting documentation, attending any interview at the applicant's premises and calculation of apportionment rates.

Consultants should ensure that documentation for all expenses and export earnings claimed is retained and is readily available for audit verification. When requesting documentation, Austrade will generally allow at least five days for invoices, bank statements and other records that are kept in the normal course of business or used as a part of the application. Additional time may be granted for if requested for more complex information or other reasons.

AUSTRADE'S EXPECTATIONS OF EMDG CONSULTANTS

Protecting the probity and good public image of the EMDG scheme is a priority for the government. Due to the influential role that EMDG consultants play in the scheme it is important that these consultants act professionally and honestly in preparing applications.

Austrade expects that an EMDG consultant, and its associates, are 'fit and proper' people. The matters that the CEO of Austrade must take into account are detailed in Part 4 of the *Export Market Development Grants (Associate and Fit and Proper Person) Guidelines 2015*. This includes if the consultant or their associate:

- has been convicted of an offence listed in section 78 of the EMDG Act or was released from prison for that offences within the past five years
- has done something for the purpose of obtaining an amount of grant to which the applicant for grant is not entitled
- has failed to take due care and diligence on work related to an EMDG application (see page four for more information on due care and diligence)
- has provided a false or misleading statement or information in relation to an EMDG application
- is a party to a scheme or arrangement which has the purpose or effect of negating the purpose of, or avoiding or defeating, Division 2A of Part 7 of the Act, section 87AA of the Act or any of the provisions of these guidelines
- operates under a policy which has the purpose or effect of negating the purpose of, or avoiding or defeating, Division 2A of Part 7 of the Act
- has the appropriate competence, skills, knowledge and experience to be an EMDG consultant.

If Austrade has concerns about a consultant's, or its associate's 'fit and proper' status, and is considering making an Excluded Consultant determination, the consultant will be given the opportunity to provide information and reasons why the determination should not be made.

The consequence of an Excluded Consultant determination is that any unassessed EMDG applications the Excluded Consultant has prepared or helped to prepare will be rejected by Austrade. Any affected applicant will be notified that they will need to make a fresh application for EMDG if they wish to, within 90 days or by the end of the lodgement period, whichever is later.

WHAT IS DUE CARE AND DILIGENCE?

The concept of due care and diligence or reasonable care is a well-established feature of the common law in Australia and is used in many regulatory frameworks such as directors' duties, tax and migration agents.

There is no set formula for determining whether due care and diligence has been applied in any given situation. This will depend on an objective examination of the circumstances of an EMDG applicant and the EMDG consultant applying their professional judgment. The standard of 'due care and diligence' is what can be expected from a competent and reasonable person possessing the knowledge, skills and experience expected of an EMDG consultant given the circumstances of the applicant.

What level of competence, knowledge, skills, and experience can be expected of an EMDG consultant?

Although there is no accreditation scheme for EMDG, all EMDG consultants are expected to a good working knowledge of the EMDG scheme, including the EMDG Act, its legislative instruments, and supporting information. By following the *EMDG Guide to Applying*, an EMDG consultant will be able to identify the information it will need to obtain from a clients and when it should refer to other EMDG related determinations, guidelines, or contact Austrade for more information.

Indicators of performance that will draw Austrade's attention include:

- a claim adjustment rate that is higher than that for self-prepared claims
- a high proportion of actively assessed EMDG applications adjusted by more than five per cent
- administrative errors such as duplicate entries and inaccurate information
- a demonstrated poor understanding of the EMDG scheme
- claiming unsubstantiated expenses
- the level of preparation for an assessment.

Example 1 – due care and diligence taken in obtaining relevant information

An applicant who has satisfied the grants entry criteria intends to make a claim for overseas representation. The EMDG consultant emails the applicant to advise them of the requirement to apportion expenses and request information.

The applicant sends through the overseas representative agreement, timesheets and marketing reports as evidence of the time spent and work done on eligible activities and advises that there were no ineligible expenditure items included in the amount. There was no information that would suggest that the information provided was incomplete or incorrect. No further enquiries were made and the full amount is claimed at schedule 1A.

As a part of the assessment process, Austrade visits and interviews the overseas representatives and discovers that other ineligible activities were undertaken in the grant year and adjusts the claim.

Although there was an adjustment, it is Austrade's view that the consultant has applied due care and diligence expected of an EMDG consultant in this case. They properly advised the applicant about eligibility and obtained evidence to support the claim of 100 per cent eligible expenditure. As a result, this adjustment will not be included in the consultant's claim adjustment rate for QIP or other purposes.

Example 2 – due care and diligence not taken in obtaining relevant information

An applicant has been in business for 20 years and exporting for 10 years. During that time, there have been changes in the management and shareholders. The consultant asks the management if the company had claimed EMDG in the past and they advised that they did not know.

The consultant lodges an EMDG application on behalf of the business as a year 1 claim. Austrade subsequently identifies that the business has received four grants and makes the relevant adjustments to the current claim.

Although the consultant asked the company management about the claim history, their answers, the age of the company and exporting experience should have prompted an enquiry to Austrade about their grants history prior to lodgement. The adjustments in this application for prior year expenditure will be included in the consultant's claim adjustment rate and Austrade may consider whether a consultant not fit and proper determination should be made for failing to take due care and diligence.

Example 3 – due care and diligence not taken in obtaining relevant information

An applicant contacts an EMDG consultant from overseas on closing date of EMDG applications. The consultant had no previous dealings with the applicant and after some information was provided verbally agrees to lodge an application on their behalf without any supporting evidence of eligibility.

The consultant subsequently visited the client's business premises and requested the supporting documentation. At this time, it became apparent that it was almost certain that they were ineligible and substantiation was a problem.

When undertaking the assessment, Austrade found that the consultant had failed to take due care and diligence in the preparation of the EMDG application and will consider whether a consultant not fit and proper determination should be made.

EMDG CONSULTANT QUALITY INCENTIVE PROGRAM (QIP)

The QIP is a voluntary scheme designed to encourage the lodgement of more accurate EMDG applications by providing an incentive to consultants in the form of access to an extended lodgement period and listing on the Austrade website.

Eligibility for the QIP

Consultants wishing to participate in the QIP need to meet the conditions outlined in the *Export Market Development Grants (Extended Lodgement and Consultant Quality Incentive) Determination 2012* (the determination).

Joining the QIP

Austrade will write to all consultants in June each year who, according to Austrade's records, have lodged at least five claims in the preceding year, inviting them to consider applying to join the QIP.

The criteria that will apply to all QIP participants are that the applicant must:

- be aged at least 18
- be an Australian citizen or permanent resident of Australia
- be a fit and proper person
- have been recorded as the EMDG consultant for at least five applications in the preceding grant year
- have a grant adjustment rate for the preceding grant year did exceeding five per cent.

Further conditions applicable to the conduct and administration of QIP are prescribed in [the determination](#).

QIP-approved EMDG Consultants are listed for easy identification and access by EMDG grant applicants on the [EMDG website](#).

Continuing as a QIP Consultant

To remain on the QIP, a consultant must maintain a claim adjustment rate below five per cent. In July and September each year, Austrade will contact consultants that have a claim adjustment rate above five per cent for the previous grant year. Together the consultant and Austrade will examine what has contributed to this adjustment rate. Consultants should note that if, after these discussions, the adjustment rate remains above five per cent, a consultant can be removed from the QIP.

How is the claim adjustment rate calculated?

The grant adjustment rate for a grant year is worked out using the formula:

$$\frac{(A - B) \times 100}{A}$$

A is the total of grant amounts claimed for applications that have been assessed using an active audit that are not currently subject to any review, court or tribunal proceeding. An active audit means an audit of a claim for grant in which Austrade contacts the applicant, after the claim is received by Austrade, to ask for further information.

B is the total of provisional grant amounts determined by Austrade, and set out in notices issued by Austrade, for all relevant applications for grants for all those applications for grant included in **A**.

Both **A** and **B** would be adjusted where it would be unreasonable for a particular grant application to be included in the calculation. The reasons for adjustment include factors outside the consultant's control, disclosed positions that satisfy the requirements of the [position disclosure form](#) and specific items listed in paragraph 1.4 of [the determination](#), such as insolvency, ABN cancellation and applicant disqualification after the date of application.

**EXPORT MARKET DEVELOPMENT GRANTS
CONSULTANT APPLICATION FORM**
(to prepare EMDG Applications on behalf of grant applicants)

Individual Details

Family Name:	
Given Name:	
Business Address:	
Organisation and ABN:	
Phone No: Fax number:	
Email Address:	

If you change this e-mail address you should advise Austrade immediately.
We may also send Commercial-in-Confidence emails to this address.

/ /

(Consultant's signature)

/ /

(Austrade officer's signature)

Please return this form to emdg.help@austrade.gov.au
New consultants must apply before 27 November in order to be registered in time to lodge claims by the 30 November due date.
If you have any questions please contact the EMDG Help Desk on 13 28 78.

Note: EMDG Consultants can only lodge claims until the end of November each year. Extended lodgement, until the end of February in the following year, is only available to approved QIP Consultants. Please refer to page five of the Information for EMDG Consultants publication for more information on the QIP.