



Export Market Development Grants Rules 2021

I, Dan Tehan, Minister for Trade, Tourism and Investment, make the following rules.

Dated 2021

Dan Tehan
Minister for Trade, Tourism and Investment

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Part 1—Preliminary

1 Name

This instrument is the *Export Market Development Grants Rules 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as Schedule 1 to the <i>Export Market Development Grants Legislation Amendment Act 2020</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Export Market Development Grants Act 1997*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) *grant agreement*;
- (b) *grantee*.

In this instrument:

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

Australian person means a person of a kind mentioned in a paragraph of section 15 of the Act (including a person prescribed for the purposes of paragraph 15(g)).

designated connection: see section 27.

disqualifying conviction of a grantee: see subsection 15(4).

event includes a conference, meeting, convention or exhibition, or a sporting, cultural or entertainment event.

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foreign person means a person who is not an Australian person.

foreign tourist means an individual who is a foreign person visiting Australia as a tourist.

intellectual property does not include rights relating to know-how.

know-how means private knowledge, information or expertise that:

- (a) relates to commercial or industrial operations; and
- (b) has commercial value; and
- (c) is imparted for the purposes of enabling the recipient to carry out a particular activity.

outstanding: see subsection 15(3).

ready to export: see section 5.

related entity: a person is a **related entity** of another person if:

- (a) the persons are:
 - (i) an individual and a body incorporated under the *Corporations Act 2001*; or
 - (ii) 2 bodies incorporated under the *Corporations Act 2001*; and
- (b) any of the following apply:
 - (i) one person controls the other person (within the meaning of section 50AA of the *Corporations Act 2001*);
 - (ii) the same shareholder or shareholders own all the shares in both persons;
 - (iii) one person is a director of the other person.

representative body: see subsection 17(2).

represented group: see paragraph 17(2)(a).

software: see section 6.

tourism services: see subsection 20(2).

under insolvency administration: see subsection 16(3).

5 Definition of *ready to export*

For the purposes of the definition of **ready to export** in section 5 of the Act, a person is ready to export eligible products if:

- (a) the person has not previously exported eligible products; and
- (b) the person has appropriate skills in marketing eligible products in a foreign country, demonstrated by:
 - (i) a declaration by the person that they have used Austrade's export readiness tool and as a result believe they are ready to export; or
 - (ii) the person having completed export readiness training provided by the Commonwealth, a State or Territory or a representative body, or any other person or body.

6 Definition of *software*

- (1) ***Software*** includes:
 - (a) software in the form of a combination of goods and intellectual property or know-how; and
 - (b) services provided in relation to software such as management or maintenance of software.
- (2) However, to be ***software***, a product must be, or include, intellectual property in the form of copyright.
- (3) Goods, intellectual property or know-how, or services, that, alone or in combination, constitute software are treated for the purposes of this instrument as software and not as goods, intellectual property or know-how, or services.

Part 2—Eligible kinds of persons

7 Australian individual

For the purposes of paragraph 15(a) of the Act, an individual is Australian if the individual's principal place of residence is in Australia.

8 Australian partnership

For the purposes of paragraph 15(d) of the Act, a partnership is Australian if:

- (a) the partnership was formed and operates under a law of a State or Territory; and
- (b) at least half the partners are Australian persons.

9 Australian trust

For the purposes of paragraph 15(e) of the Act, a trust is Australian if the trustee, or each trustee, of the trust is an Australian person.

10 Eligibility conditions for applicants other than representative bodies

- (1) For the purposes of paragraph 16(1)(b) of the Act, the conditions set out in subsections (2) and (3) are prescribed as conditions that must be satisfied by a person other than a representative body, at the time the person applies for a grant.
- (2) The person's turnover for the financial year before the financial year in which the application is made is less than \$20,000,000.
- (3) The person has a plan to market eligible products.

11 Eligibility condition for applicants that are representative bodies

- (1) For the purposes of paragraph 16(1)(b) of the Act, the condition set out in subsection (2) is prescribed as a condition that must be satisfied by a representative body, at the time the representative body applies for a grant.
- (2) If the application is for a grant to meet eligible expenses in respect of promotional activities—the representative body has a plan to market eligible products to which members of the represented group have a designated connection.

12 Eligibility condition for all applicants and grantees: ABN

- (1) For the purposes of paragraph 16(1)(b) of the Act, the condition set out in subsection (2) is prescribed as a condition that must be satisfied by a person (including a representative body):
 - (a) at the time the person applies for a grant; and
 - (b) at all times while the person is a grantee.

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- (2) The person has an ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*).

13 Eligibility conditions for applicants and grantees other than representative bodies: 8 year cap on grants

- (1) For the purposes of paragraph 16(1)(b) of the Act, the condition set out in subsection (2) is prescribed as a condition that must be satisfied by a person other than a representative body, immediately before the person enters into a grant agreement.
- (2) The person's entry into the grant agreement does not result in grants being payable to the person in respect of more than 8 financial years.
- (3) For the purposes of paragraph 16(1)(b) of the Act, the condition set out in subsection (4) is prescribed as a condition that must be satisfied by a person other than a representative body, immediately before a grant or instalment of a grant is paid to the person.
- (4) The payment of the grant or instalment to the person does not result in the person being paid grants in respect of more than 8 financial years.
- (5) For the purposes of subsections (2) and (4):
- (a) a reference to a grant includes a grant within the meaning of:
 - (i) the Act as in force at any time; or
 - (ii) the *Export Market Development Grants Act 1974* as in force at any time on or after 1 July 1990; and
 - (b) the number of financial years in respect of which grants are payable or paid to a person (the **grantee**) includes financial years in respect of which grants were paid to another person (including another person that has ceased to exist), if the CEO of Austrade is satisfied that the grantee is in substance conducting the business that the other person conducted, having regard to any of the following:
 - (i) the nature and assets of the businesses conducted by the grantee and the other person;
 - (ii) the individuals controlling or constituting the grantee and the other person;
 - (iii) any other matters the CEO of Austrade considers relevant.

14 Eligibility condition for applicants and grantees that are representative bodies

- (1) For the purposes of paragraph 16(1)(b) of the Act, the condition set out in subsection (2) is prescribed as a condition that must be satisfied by a representative body:
- (a) at the time the representative body applies for a grant; and
 - (b) at all times while being a grantee.
- (2) If the application is or was for a grant to meet eligible expenses in respect of training activities—the representative body has the skills and experience

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necessary to deliver, or arrange for the delivery of, training that enables members of the represented group to become ready to export.

15 Eligibility condition for all grantees: no disqualifying convictions

- (1) For the purposes of paragraph 16(1)(b) of the Act, the condition set out in subsection (2) is prescribed as a condition that must be satisfied by a grantee, at all times while being a grantee.
- (2) No disqualifying convictions of the grantee are outstanding.
- (3) A disqualifying conviction of a grantee is **outstanding** for the period starting on the day the conviction was recorded and ending:
 - (a) if the convicted person is sentenced to a term of imprisonment—5 years after the earlier of the end of the term of imprisonment and the person’s release from prison; or
 - (b) otherwise—5 years after the day the conviction was recorded.
- (4) A **disqualifying conviction of a grantee** is any conviction of the grantee for any of the following offences:
 - (a) an offence that, under subsection 206B(1) of the *Corporations Act 2001*, disqualifies a person from managing a corporation;
 - (b) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 or 137.2 of the *Criminal Code* that relates to a grant (including an application for a grant);
 - (c) any of the following that relates to an offence mentioned in paragraph (a) or (b):
 - (i) an offence against section 6 of the *Crimes Act 1914*;
 - (ii) an ancillary offence within the meaning of the *Criminal Code*;
 - (iii) an offence against a law of a State or Territory that corresponds to an offence mentioned in subparagraph (i) or (ii).

16 Eligibility condition for grantees other than representative bodies: not under insolvency administration

- (1) For the purposes of paragraph 16(1)(b) of the Act, the condition set out in subsection (2) is prescribed as a condition that must be satisfied by a grantee other than a representative body, at all times while being a grantee.
- (2) The grantee must not be under insolvency administration.
- (3) A grantee is **under insolvency administration** if any of the following apply:
 - (a) if the grantee is an individual:
 - (i) the grantee is an undischarged bankrupt; or
 - (ii) there is in operation a composition, deed of arrangement or deed of assignment with the grantee’s creditors under a law relating to bankruptcy; or
 - (iii) the grantee has suffered final judgment for a debt and the judgment has not been satisfied;

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- (b) if the grantee is an incorporated body mentioned in paragraph 15(b) or (c) of the Act—any of the following is appointed under the *Corporations Act 2001*:
 - (i) a receiver, or receiver and manager, of the property of the grantee;
 - (ii) an administrator of the grantee or of a deed of company arrangement executed by the grantee;
 - (iii) a liquidator of the grantee;
 - (iv) any other controller of the grantee;
 - (c) if the grantee is an incorporated body mentioned in paragraph 15(b) or (c) of the Act—a controller equivalent to any of the controllers mentioned in paragraph (b) is appointed, under a law other than the *Corporations Act 2001*, to the grantee or the property of the grantee;
 - (d) if the grantee is a partnership—a partner in the partnership is ***under insolvency administration*** within the meaning of paragraph (a), (b) or (c);
 - (e) if the grantee is a trust—a trustee of the trust is ***under insolvency administration*** within the meaning of paragraph (a), (b) or (c).

17 Exclusion from subsection 16(2) of the Act: representative body

- (1) A representative body is excluded from subsection 16(2) of the Act.
- (2) A person other than an individual is a ***representative body*** if the person satisfies all of the following requirements:
 - (a) the person promotes the interests of a group of Australian persons (the ***represented group***);
 - (b) the person does so in a way that is representative of the members of an industry, the members of a substantial part of an industry, or the members of more than one industry;
 - (c) all or a substantial number of the members of the represented group:
 - (i) are exporting eligible products and seeking to expand their export promotion activity (within existing, or to new, export markets) for eligible products; or
 - (ii) have a designated connection to an eligible product (see section 27);
 - (d) the person will have, during the period a grant agreement is in effect, eligible expenses in respect of:
 - (i) promotional activities undertaken for the purposes of marketing eligible products, to which the members of the represented group have a designated connection, in a foreign country; or
 - (ii) training activities undertaken for the purposes of developing skills in marketing eligible products, to which the members of the represented group have a designated connection, in a foreign country;
 - (e) either:
 - (i) the person does not export eligible products; or
 - (ii) the export of eligible products is not one of the person's primary activities;
 - (f) the person does not distribute income to members or shareholders.
- (3) For the purposes of working out whether a person satisfies the requirement in subparagraph (2)(d)(ii), assume the person is a representative body.

Part 3—Eligible products

18 Eligible products

For the purposes of subsection 17(1) of the Act, a product of any of the following kinds is an eligible product if the product satisfies the conditions prescribed by this Part for the product:

- (a) goods;
- (b) services;
- (c) events;
- (d) intellectual property;
- (e) know-how;
- (f) software.

19 Condition for goods

- (1) The condition that must be satisfied by goods is that they satisfy at least one of the following requirements and are not excluded by subsection (2) or (3):
 - (a) the goods are primary products of Australia mined, harvested, raised or fished within Australia;
 - (b) the goods are mainly made from primary products of Australia within the meaning of paragraph (a);
 - (c) the goods are manufactured or assembled in Australia partly or wholly from imported materials or components that, in Australia, undergo or are part of a process or operation that:
 - (i) results in the manufacture of a new product; or
 - (ii) substantially transforms the nature of the materials or components; or
 - (iii) is an important stage in the manufacture of a product to be produced outside Australia using the goods;
 - (d) the goods are made outside Australia and at least 3 of the following subparagraphs apply:
 - (i) the assets used to make the goods ready for sale (other than assets used in manufacture) are mainly or substantially based in Australia;
 - (ii) the activities resulting in the goods being made ready for sale (other than manufacture) are mainly or substantially carried on in Australia;
 - (iii) a significant proportion of the value of the goods is added in Australia;
 - (iv) the making of the goods directly generates significant employment in Australia.
- (2) Goods that are manufactured or assembled in Australia partly or wholly from imported materials or components that, in Australia, undergo or are part of a process or operation are excluded if the process or operation is:
 - (a) designed to circumvent rules relating to the origin or origins of the product; or
 - (b) only grading, packing or sorting the materials or components.

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- (3) Goods are excluded if they relate to any of the following:
- (a) pornographic material, including pornographic material in publications, films or computer games, or accessible on the internet;
 - (b) activities or products that are unlawful.

20 Condition for tourism services

- (1) The condition that must be satisfied by tourism services is that they are supplied in Australia to foreign persons and are not excluded by section 22.
- (2) Services are *tourism services* if the services are the supply of any of the following:
- (a) passenger transport by land, including vehicle hire (but not a transfer service for foreign tourists);
 - (b) passenger transport by water or air;
 - (c) at least one night's accommodation (but not accommodation supplied to an individual other than a foreign tourist except while the individual is undertaking a leisure trip);
 - (d) tours;
 - (e) paid admission to:
 - (i) a place that has one or more outstanding natural features or is of historical interest; or
 - (ii) a park, nature reserve or botanical garden; or
 - (iii) a wildlife sanctuary or zoological garden; or
 - (iv) a museum, art gallery or craft centre; or
 - (v) a place that is, or provides, an amenity appropriate to tourists; or
 - (vi) an event;
 - (f) services at a place the main purpose of which is to provide a venue and associated facilities for meetings, conventions and exhibitions;
 - (g) the services of a restaurant or cafe;
 - (h) services directly related to the act of gambling in a place licensed as a casino under an Australian law.

21 Condition for services other than tourism services

The condition that must be satisfied by services other than tourism services is that:

- (a) the services are supplied (whether in or outside Australia) to foreign persons; and
- (b) at least 3 of the following subparagraphs apply:
 - (i) the assets used to make the services ready for sale or supply are mainly or substantially based in Australia;
 - (ii) the activities resulting in the services being made ready for sale or supply are mainly or substantially carried on in Australia;
 - (iii) for services supplied outside Australia—a significant proportion of the value of the services is added in Australia;
 - (iv) the supply of the services directly generates significant employment in Australia; and

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- (c) the services are not excluded by section 22.

22 Excluded services

- (1) For the purposes of the conditions in sections 20 and 21, services are excluded if they relate to any of the following:
- (a) migration to Australia, including proceedings or actions to enter or remain in Australia;
 - (b) adoption, custody or welfare of a child;
 - (c) proceedings about the maintenance of a person;
 - (d) proceedings under the *Family Law Act 1975*;
 - (e) identification, procurement, lease, sale or purchase of assets in Australia (whether tangible or intangible), including cash, real estate, stocks, options or shares;
 - (f) protection, operation or maintenance of assets held in Australia;
 - (g) compliance with the laws of Australia;
 - (h) prostitution;
 - (i) pornographic material, including pornographic material in publications, films or computer games, or accessible on the internet;
 - (j) activities or products that are unlawful;
 - (k) the provision of a gambling service by a person not licensed under an Australian law to provide the service.
- (2) For the purposes of the conditions in sections 20 and 21, the following services are excluded:
- (a) any service supplied in Australia to foreign tourists that is not a tourism service;
 - (b) selection or recruitment of students to work in Australia.

23 Condition for events

The condition that must be satisfied by an event is that either:

- (a) the event is held in Australia; or
- (b) if the event is online—the event is provided by an Australian person.

24 Condition for intellectual property and know-how

The condition that must be satisfied by intellectual property or know-how is that:

- (a) for intellectual property rights relating to a trade mark—the trade mark was first used in Australia, or has increased in significance or value because of being used in Australia; and
- (b) for intellectual property rights relating to any other thing, or for know-how—the thing, or know-how, is the result, wholly or substantially, of research or work done in Australia.

25 Condition for software

The condition that must be satisfied by software is that, to the extent that the software is a work in which copyright subsists, the work is the result, wholly or substantially, of research or work done in Australia.

Part 4—Eligible expenses

Division 1—Eligible expenses

26 Eligible expenses of a person in respect of promotional activities

- (1) For the purposes of subsection 18(1) of the Act, an expense of a person is an eligible expense of the person if:
 - (a) the expense is in respect of a promotional activity undertaken for the purposes of marketing an eligible product in a foreign country; and
 - (b) the person has a designated connection to the eligible product (see section 27); and
 - (c) the expense is covered by any of sections 28 to 36.
- (2) Subsection (1) does not apply to an expense or part of an expense if a provision of Division 5 of Part 2 of the Act, or Division 2 of this Part, provides that the expense or part is excluded.

27 Designated connection to eligible product

Goods

- (1) A person has a **designated connection** to an eligible product that is goods if:
 - (a) the person, or a related entity of the person, owns the goods; or
 - (b) the person, or a related entity of the person, owns, or holds an exclusive licence for, one or more intellectual property rights in relation to the goods; or
 - (c) the person is a representative body and members of the represented group have a designated connection to the goods within the meaning of paragraph (a) or (b).

Services

- (2) A person has a **designated connection** to an eligible product that is services if:
 - (a) the person supplies the services; or
 - (b) the person is a representative body and members of the represented group supply the services.

Events

- (3) A person has a **designated connection** to an eligible product that is an event if:
 - (a) the person provides the event; or
 - (b) the person is the promoter of the event under a written arrangement with the person providing the event; or
 - (c) the person is a representative body and members of the represented group have a designated connection to the event within the meaning of paragraph (a) or (b).

Intellectual property and know-how

- (4) A person has a **designated connection** to an eligible product that is intellectual property or know-how if:
- (a) the person is the owner of the intellectual property or know-how; or
 - (b) the person is licensed to promote the intellectual property or know-how by its owner; or
 - (c) the person is a representative body and members of the represented group have a designated connection to the intellectual property or know-how within the meaning of paragraph (a) or (b).

Software

- (5) A person has a **designated connection** to an eligible product that is software if:
- (a) the person owns, or holds an exclusive licence to use, copyright in the software or that part of the software that is in the form of intellectual property; and
 - (b) to the extent that the software is also in the form of an eligible product that is goods—the person has a designated connection to the software within the meaning of subsection (1); and
 - (c) to the extent that the software is also in the form of an eligible product that is services—the person has a designated connection to the software within the meaning of subsection (2); and
 - (d) to the extent that the software is in the form of an eligible product that is intellectual property or know-how other than copyright—the person has a designated connection to the software within the meaning of subsection (4).
- (6) A person has a **designated connection** to an eligible product that is software if the person is a representative body and members of the represented group have a designated connection to the software within the meaning of subsection (5).

28 Maintaining representative in foreign country

For the purposes of paragraph 26(1)(c), this section covers the expense of maintaining a representative in a foreign country for more than 6 months in a financial year, so far as the representative is:

- (a) conducting research into the market in the foreign country for eligible products; or
- (b) undertaking promotional activities for the purposes of marketing eligible products in the foreign country.

29 Short trips to foreign country

For the purposes of paragraph 26(1)(c), this section covers the expense of up to 21 days' continuous travel for the person, or a representative of the person, between Australia and a foreign country.

30 Consultants

For the purposes of paragraph 26(1)(c), this section covers the expense of engaging a consultant to undertake:

Part 4 Eligible expenses

Division 1 Eligible expenses

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- (a) research into the market in the foreign country for the eligible product; or
- (b) promotional activities to market the eligible product in the foreign country.

31 Short trips within Australia

For the purposes of paragraph 26(1)(c), this section covers the expense of up to 21 days' continuous travel for the person, or a representative of the person, within Australia, in order to undertake activities that relate to marketing the eligible product to potential foreign buyers of the eligible product.

32 Foreign buyer visits

For the purposes of paragraph 26(1)(c), this section covers the expense of up to 21 days' continuous travel between Australia and a foreign country, and within Australia, for a prospective foreign buyer of the eligible product in order for the person to undertake promotional activities for the purposes of marketing the eligible products to the buyer.

33 Soliciting for business in foreign country

For the purposes of paragraph 26(1)(c), this section covers the expense of activities undertaken by the person, or a representative of the person, to solicit for business in the foreign country for the eligible products.

34 Free samples

For the purposes of paragraph 26(1)(c), this section covers the expense of providing a free sample of the eligible product:

- (a) to a person in the foreign country; or
- (b) if the eligible product is tourism services—in Australia to a person from the foreign country.

35 Promotional and advertising material

For the purposes of paragraph 26(1)(c), this section covers the expense of:

- (a) producing material to promote or advertise the eligible product in the foreign country; or
- (b) providing such material to persons in the foreign country.

36 Intellectual property rights

For the purposes of paragraph 26(1)(c), this section covers the expense for the grant or registration, in the foreign country, of rights in relation to intellectual property that is an eligible product, or the extension of a period of such registration.

37 Eligible expenses of a person in respect of training activities

- (1) For the purposes of subsection 18(1) of the Act, an expense of a person is an eligible expense of the person if:
 - (a) the person is a representative body; and

- (b) the expense is in respect of training activities delivered, or arranged to be delivered, by the person for the purposes of developing the skills of members of the represented group in marketing eligible products in foreign countries.
- (2) For the purposes of subsection 18(1) of the Act, an expense of a person is an eligible expense of the person if:
 - (a) the person meets the condition in paragraph 16(2)(a) of the Act (ready to export eligible products); and
 - (b) the expense is in respect of obtaining training for the purposes of developing the skills of the person (including staff of the person) in marketing eligible products in foreign countries.
 - (3) Subsection (2) does not apply in respect of particular training if an expense in respect of delivering or arranging for the delivery of the training is agreed under a grant agreement to be an eligible expense of a representative body under subsection (1).
 - (4) Subsections (1) and (2) do not apply to an expense or part of an expense if a provision of Division 5 of Part 2 of the Act, or Division 2 of this Part, provides that the expense or part is excluded.

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Division 2—Excluded expenses

38 Excluded expenses

For the purposes of subsection 18(3) of the Act, an expense or part of an expense is excluded if the expense or part is excluded by a provision of this Division.

39 Soliciting sponsorship for event

An expense of a person is excluded if the purpose of the expense is to solicit sponsorship for an event.

40 Capital expenses

- (1) An expense of a person of a capital nature is excluded.
- (2) However, an expense covered by section 36 (intellectual property rights) is taken not to be of a capital nature.

41 Trade with New Zealand

An expense of a person with respect to trade with New Zealand is excluded.

42 Paid expenses

An expense of a person in respect of a thing done by the person is excluded to the extent that the person has been paid, or is entitled to be paid, consideration for doing the thing.

43 Taxes etc.

- (1) An expense of a person is excluded if the expense is payment of a tax, levy or other contribution under an Australian law.
- (2) However, payment of a charge imposed by the *Passenger Movement Charge Act 1978* is not excluded.

44 Sales-related expense in relation to eligible product

- (1) An expense of a person is excluded if the expense is a sales-related expense in relation to an eligible product.
- (2) The following are examples of sales-related expenses in relation to an eligible product:
 - (a) remuneration by way of salary, retainer or fee, to the extent the remuneration is determined, directly or indirectly, by reference to sales or other commercial transactions in relation to the eligible product;
 - (b) remuneration other than by way of salary, retainer or fee, to the extent the remuneration is determined, directly or indirectly, by reference to sales or other commercial transactions in relation to the eligible product;

- (c) a discount or credit, or equivalent amount, allowed or paid in relation to sales of the eligible product.

45 Remuneration and remuneration-like expenses

- (1) An expense covered by a provision mentioned in subsection (2) is excluded to the extent that the expense is:
 - (a) remuneration in respect of any of the following:
 - (i) an individual who is ordinarily employed by the grantee or a related entity of the grantee;
 - (ii) if the grantee is a company—a director of the company;
 - (iii) a director of a company that is a related entity of the grantee;
 - (iv) if the grantee is a partnership—a partner in the partnership;
 - (v) if the grantee is a trust—a trustee of the trust; and
 - (b) not travel allowance.
- (2) For the purposes of subsection (1), the provisions are the following:
 - (a) section 29 (short trips to foreign country);
 - (b) section 30 (consultants);
 - (c) section 31 (short trips within Australia);
 - (d) section 32 (foreign buyer visits);
 - (e) section 33 (soliciting for business in foreign country);
 - (f) section 35 (promotional and advertising material);
 - (g) section 36 (intellectual property rights).

46 Illegal activities

An expense of a person in respect of a thing done by the person is excluded if:

- (a) at the time it was done, doing the thing was an offence against the law of the place where the thing was done; or
- (b) at the time it was done, doing the thing would have been an offence against an Australian law if the thing had been done in a place in Australia.

47 Detrimental impact

- (1) An expense of a person is excluded if, in the opinion of the CEO of Austrade, the expense might have a detrimental impact on Australia's trade reputation.

Note: A decision under this subsection is reviewable (see section 55).

- (2) An expense of a person in respect of an eligible product is excluded if, in the opinion of the CEO of Austrade, the eligible product might have a detrimental impact on Australia's trade reputation.

Note: A decision under this subsection is reviewable (see section 55).

Part 5—Grants

48 Requirements for grant agreements

Maximum number of financial years

- (1) For the purposes of paragraph 9(2)(b) of the Act, the grant payable under a grant agreement must not be payable in respect of more than the maximum number of financial years applicable to:
 - (a) that tier of agreement (see subsections 49(2), 50(2) and 51(2)); or
 - (b) if the grantee is a representative body—a representative agreement (see subsection 52(2)).

Financial year cap

- (2) For the purposes of paragraph 9(2)(c) of the Act, the total amount of instalments payable under a grant agreement in respect of a financial year must not exceed the financial year cap for:
 - (a) that tier of agreement (see subsections 49(3), 50(3) and 51(3)); or
 - (b) if the grantee is a representative body—a representative agreement (see subsection 52(3)).

Cap on total amount of grants

- (3) For the purposes of paragraph 9(2)(c) of the Act, the total amount of the grant payable under a grant agreement must not be such that the total of the grant, together with any earlier grants paid to the grantee, exceeds \$770,000.
- (4) Subsection (3) does not apply if the grantee is a representative body.
- (5) For the purposes of subsection (3):
 - (a) a reference to a grant includes a grant within the meaning of:
 - (i) the Act as in force at any time; or
 - (ii) the *Export Market Development Grants Act 1974* as in force at any time on or after 1 July 1990; and
 - (b) the total amount of grants paid to a grantee includes grants paid to another person (including another person that has ceased to exist), if the CEO of Austrade is satisfied that the grantee is in substance conducting the business that the other person conducted, having regard to any of the following:
 - (i) the nature and assets of the businesses conducted by the grantee and the other person;
 - (ii) the individuals controlling or constituting the grantee and the other person;
 - (iii) any other matters the CEO of Austrade considers relevant.

49 Tier 1 agreement

- (1) A grant agreement is a tier 1 agreement if, at the time the agreement is entered into, the grantee satisfies the condition in paragraph 16(2)(a) of the Act (ready to export eligible products).
- (2) The maximum number of financial years applicable to a tier 1 agreement is 2.
- (3) The financial year cap for a tier 1 agreement is \$40,000.

50 Tier 2 agreement

- (1) A grant agreement is a tier 2 agreement if, at the time the agreement is entered into:
 - (a) the grantee satisfies the condition in paragraph 16(2)(b) of the Act (exporting eligible products and seeking to expand export promotion activity); and
 - (b) the agreement is not a tier 3 agreement.
- (2) The maximum number of financial years applicable to a tier 2 agreement is 3.
- (3) The financial year cap for a tier 2 agreement is \$80,000.

51 Tier 3 agreement

- (1) A grant agreement is a tier 3 agreement if:
 - (a) at the time the grant agreement is entered into, the grantee satisfies the condition in paragraph 16(2)(b) of the Act (exporting eligible products and seeking to expand export promotion activity); and
 - (b) the agreement includes a requirement that the grantee make a strategic shift in the marketing of eligible products in a foreign country.
- (2) The maximum number of financial years applicable to a tier 3 agreement is 3.
- (3) The financial year cap for a tier 3 agreement is \$150,000.

52 Representative agreement

- (1) A grant agreement is a representative agreement if the grantee is a representative body.
- (2) The maximum number of financial years applicable to a representative agreement is 3.
- (3) The financial year cap for a representative agreement is \$150,000.

53 Amount of grant

- (1) For the purposes of section 21 of the Act, the amount of a grant under a grant agreement is the total of the instalments payable under the agreement in respect of each financial year to which the grant agreement applies.
- (2) Subject to subsection (3), the total amount of the instalments payable under the agreement in respect of a financial year is:

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- (a) half of the total amount of the grantee's agreed eligible expenses in relation to eligible products for the financial year; or
 - (b) if such a total is not agreed for the financial year—the financial year cap for:
 - (i) the tier of agreement (see subsections 49(3), 50(3) and 51(3)); or
 - (ii) if the grantee is a representative body—a representative agreement (see subsection 52(3)).
- (3) The amount of an instalment is reduced as needed to give effect to:
- (a) subsection 48(3) (cap on total amount of grants payable); and
 - (b) section 54 (failure to spend agreed amount).
- (4) To avoid doubt, a grantee's agreed eligible expenses in relation to eligible products for the first financial year in respect of which a grant or instalment is payable under an agreement may include eligible expenses of the grantee in respect of the whole financial year, even if the grantee applied for the grant, or the grant agreement was entered into, after the start of the financial year.

54 Failure to spend agreed amount

- (1) This section applies if a grantee's eligible expenses in relation to eligible products for a financial year are less than the agreed eligible expenses for the financial year.
- (2) The amount of an instalment or instalments remaining payable under the grant agreement must be reduced, in accordance with any terms specified in the grant agreement for this purpose, so as to ensure that the amount of the grant under the agreement does not exceed half of the total amount spent by the grantee on eligible expenses in relation to eligible products for the financial years to which the grant agreement applies.

Note: Grant agreements must also include terms and conditions that provide for circumstances in which the grantee must repay amounts to the Commonwealth (see subparagraph 10(2)(b)(i) of the Act).

Part 6—Miscellaneous

55 Reviewable decisions

Conducting substantially the same business

- (1) For the purposes of paragraph 97(d) of the Act, a decision of the CEO of Austrade under paragraph 13(5)(b) or 48(5)(b), that a person is in substance conducting a business that another person conducted, is prescribed.

Detrimental impact on Australia's trade reputation

- (2) For the purposes of paragraph 97(d) of the Act, a decision of the CEO of Austrade under subsection 47(1) or (2) that an expense, or an eligible product, might have a detrimental impact on Australia's trade reputation is prescribed.

Part 7—Application and transitional provisions

56 Additional definition of *ready to export*

A person is also *ready to export* eligible products if:

- (a) the person satisfies the requirement in paragraph (b) of the definition of *ready to export* in section 5 of this instrument in relation to particular eligible products; and
- (b) the person received a single grant under the Act as in force at any time before the commencement of Schedule 1 to the *Export Market Development Grants Legislation Amendment Act 2020* in relation to the eligible products mentioned in paragraph (a).

57 Disqualifying conviction of a grantee

- (1) A reference in the definition of *disqualifying conviction of a grantee* in subsection 15(4) to a conviction of a person includes a reference to a conviction of the person before or after the commencement of this instrument.
- (2) A reference in paragraph 15(4)(c) to an offence that relates to a grant (including an application for a grant) includes a reference to an offence that relates to a grant (including an application for a grant) under the Act as in force at any time before or after the commencement of this instrument.