



Export Market Development Grants Amendment Rules 2024

I, Don Farrell, Minister for Trade and Tourism, make the following rules.

Dated 14 March 2024

Don Farrell
Minister for Trade and Tourism

Contents

1	Name	1
2	Commencement.....	1
3	Authority	1
4	Schedules.....	1
Schedule 1—Amendments		2
Part 1—Eligibility conditions		2
<i>Export Market Development Grants Rules 2021</i>		2
Part 2—Eligible expenses relating to representative bodies		9
<i>Export Market Development Grants Rules 2021</i>		9
Part 3—Grant agreements		10
<i>Export Market Development Grants Rules 2021</i>		10
Part 4—Other amendments		12
<i>Export Market Development Grants Rules 2021</i>		12
Part 5—Application of amendments		13
<i>Export Market Development Grants Rules 2021</i>		13

1 Name

This instrument is the *Export Market Development Grants Amendment Rules 2024*.

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	The day after this instrument is registered.	16 March 2024

Note: This table relates only to the provisions of this instrument as originally made.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 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Eligibility conditions

Export Market Development Grants Rules 2021

1 Section 4

Insert:

ABN has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

category of grant agreement means a kind of grant agreement referred to in a subsection of section 49.

2 Section 4

Insert:

disqualifying conviction of a person: see subsection 13(4).

3 Section 4 (definition of *disqualifying conviction of a grantee*)

Repeal the definition.

4 Section 4 (definition of *outstanding*)

Omit “15(3)”, substitute “13(3)”.

5 Section 4 (definition of *under insolvency administration*)

Omit “16(3)”, substitute “13(5)”.

6 Paragraph 5(b)

Repeal the paragraph, substitute:

- (b) the person has successfully completed either or both of the following:
 - (i) export training activities that are recognised by the CEO of Austrade as developing skills in marketing eligible products in a foreign country;
 - (ii) a test that is approved by the CEO of Austrade for assessing export capability and knowledge.

7 After Part 1

Insert:

Part 1A—Applications for grants

6A Requirements for applications

- (1) For the purposes of subsection 8(2) of the Act, an application for a grant to be payable under a category of grant agreement in response to an invitation under section 7 of the Act:

- (a) must be made in the form and manner required by the CEO of Austrade;
and
 - (b) if the CEO of Austrade has decided that applications, or applications for a grant to be payable under that category of grant agreement, in response to the invitation must be received before a set time—must be received before that time.
- (2) Without limiting paragraph (1)(b), the CEO of Austrade may set a time for the purposes of that paragraph by reference to an event or circumstance occurring in relation to the making of the grants or the funding available to make the grants.

8 Part 2 (heading)

Repeal the heading, substitute:

Part 2—Eligibility for grant

Division 1—Eligible kinds of persons

9 Sections 10 to 16

Repeal the sections, substitute:

Division 2—Eligibility conditions

10 Eligibility conditions for applicants that are not representative bodies

- (1) For the purposes of paragraph 16(1)(b) of the Act, the conditions in subsection (2) must be satisfied by a person (other than a representative body) at the time the person applies for a grant to be payable under a category of grant agreement.
- (2) The conditions are:
 - (a) if the CEO of Austrade decides that only one or more categories of grant agreements may be entered into at that time—the grant agreement is of one of those categories; and
 - (b) the person has a high-quality plan for marketing or promoting eligible products in a foreign country that is unique to and tailored to the person's business; and
 - (c) the person has the capacity to spend:
 - (i) \$20,000; or
 - (ii) if the CEO decides a higher amount for that category of grant agreement and that time—that higher amount;on marketing or promoting those eligible products in the foreign country; and
 - (d) if the CEO of Austrade decides that grants under that category of grant agreement are only to be payable in relation to particular markets at that time—the person intends to market or promote those eligible products in one of those markets; and
 - (e) the person is conducting a business of providing those eligible products under an ABN and has been conducting the business under the same ABN for at least:
 - (i) 2 years; or

- (ii) if the CEO of Austrade decides a higher number of years for that category of grant agreement and that time—that higher number of years; and
 - (f) the turnover of the business for the financial year before the financial year in which the application is made is less than \$20,000,000 but more than:
 - (i) \$100,000; or
 - (ii) if the CEO of Austrade decides a higher amount for that category of grant agreement and that time—that higher amount; and
 - (g) the person is fit to receive a grant (see section 13); and
 - (h) entry into the grant agreement would not result in:
 - (i) the person having entered into one or more tier 1 agreements that in total are for a period of longer than 2 years; or
 - (ii) the person having entered into one or more tier 2 agreements that in total are for a period of longer than 4 years; or
 - (iii) the person having entered into one or more tier 3 agreements that in total are for a period of longer than 4 years; or
 - (iv) the person having entered into one or more grant agreements of any category that in total are for a period of longer than 8 years; or
 - (v) the person being paid grants in respect of a period longer than 8 years.
- (3) For the purposes of paragraph (2)(h):
- (a) a reference to a category of agreement includes any equivalent category of agreement entered under:
 - (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) 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
 - (c) the number of grant agreements that a person (the **grantee**) has entered, or the number of grants paid to the grantee, includes grant agreements entered into by another person, and 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.

11 Eligibility conditions for applicants that are representative bodies

- (1) For the purposes of paragraph 16(1)(b) of the Act, the conditions in subsection (2) must be satisfied by a person that is a representative body at the time the representative body applies for a grant.
- (2) The conditions are:

- (a) if the CEO of Austrade decides that only one or more categories of grant agreements may be entered into at that time—representative agreements is one of those categories; and
- (b) the representative body has an ABN; and
- (c) the representative body is fit to receive a grant (see section 13); and
- (d) if the application is for a grant to meet eligible expenses in respect of proposed promotional activities:
 - (i) the proposed promotional activities are new promotional activities; and
 - (ii) the representative body has a high-quality plan for the proposed promotional activities that is unique to the representative body and tailored to the representative group; and
 - (iii) the proposed promotional activities are of a kind covered by subsection (3) at that time; and
- (e) if the application is for a grant to meet eligible expenses in respect of proposed export training activities:
 - (i) the representative body has a high-quality plan for the proposed training activities that is unique to the representative body and tailored to the representative group; and
 - (ii) the proposed export training activities are covered by subsection (4) at that time; and
 - (iii) the representative body has the skills and experience necessary to deliver, or arrange for the delivery of, the proposed export training activities.

Promotional activities

- (3) Proposed promotional activities to be undertaken by a representative body are covered by this subsection at a time if:
 - (a) the activities will support members of the represented group that are new to export to become ready for export; or
 - (b) the activities will support members of the represented group to export eligible products, to which the members have a designated connection (see section 27):
 - (i) in a foreign country; or
 - (ii) if the CEO of Austrade decides that grants to representative bodies are only to be payable in relation to particular markets at that time—in those markets.

Export training activities

- (4) Proposed export training activities to be delivered by, or on behalf of, a representative body are covered by this subsection at a time if:
 - (a) the activities will support members of the represented group that are new to export to become ready for export; or
 - (b) the activities will support members of the represented group to develop skills in marketing eligible products, to which the members have a designated connection (see section 27):
 - (i) in a foreign country; or

- (ii) if the CEO of Austrade decides that grants to representative bodies are only to be payable in relation to particular markets at that time—in those markets.

Note: These activities will be approved export training if a grant agreement is entered into in respect of the activities (see the definition of *approved export training* in section 4 and section 37).

12 Eligibility conditions for grantees

- (1) For the purposes of paragraph 16(1)(b) of the Act, the conditions in subsection (2) must be satisfied by a person (including a representative body) at all times while the person is a grantee.
- (2) The conditions are:
 - (a) the person has an ABN; and
 - (b) the person is fit to receive a grant (see section 13); and
 - (c) if the CEO of Austrade decides that grants under a category of grant agreement, to which the person is a party, are only to be payable in relation to particular markets during a period while the person is a grantee and:
 - (i) the grant is to meet eligible expenses in respect of marketing or promoting eligible products—the person is marketing or promoting those eligible products in one of those markets during that period; or
 - (ii) if the person is a representative body and the grant is to meet eligible expenses in respect of promotional activities—the person is undertaking those activities in one of those markets during that period; and
 - (d) if the person is a representative body and the grant is to meet eligible expenses in respect of approved export training by the person—the representative body has the skills and experience necessary to deliver, or arrange for the delivery of, the approved export training.

13 Fitness for grant

- (1) A person is fit to receive a grant at a time if:
 - (a) the person has complied with all of the person's obligations under taxation laws (within the meaning of the *Income Tax Assessment Act 1997*) during the current income year and the previous 2 income years; and
 - (b) no disqualifying convictions of the person are outstanding; and
 - (c) if the person is not a representative body—the person is not under insolvency administration; and
 - (d) the CEO of Austrade has not, within the last 2 years, decided under subsection (2) that the person is unfit to receive a grant.
- Note: It is a condition at application for a grant and at all times while a person is a grantee that the person be fit to receive a grant (see paragraphs 10(2)(g), 11(2)(c) and 12(2)(b)).
- (2) The CEO of Austrade may decide that a person who has applied for a grant, or is a grantee, is unfit to receive a grant if the CEO reasonably believes that:
 - (a) the person is not conducting their business in a professional or ethical manner; or
 - (b) Austrade dealing with the person might have a detrimental impact on Australia's trade reputation.

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

- (3) A disqualifying conviction of a person 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 person is any conviction of the person 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).
- (5) A person is **under insolvency administration** if any of the following apply:
- (a) if the person is an individual:
 - (i) the person is an undischarged bankrupt; or
 - (ii) there is in operation a composition, deed of arrangement or deed of assignment with the person’s creditors under a law relating to bankruptcy; or
 - (iii) the person has suffered final judgment for a debt and the judgment has not been satisfied;
 - (b) if the person 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 person;
 - (ii) an administrator of the person or of a deed of company arrangement executed by the person;
 - (iii) a liquidator of the person;
 - (iv) any other controller of the person;
 - (c) if the person 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) of this subsection is appointed, under a law other than the *Corporations Act 2001*, to the person or the property of the person;
 - (d) if the person is a partnership—a partner in the partnership is under insolvency administration within the meaning of paragraph (a), (b) or (c);
 - (e) if the person is a trust—a trustee of the trust is under insolvency administration within the meaning of paragraph (a), (b) or (c).

10 After paragraph 17(2)(b)

Insert:

- (ba) the number of members in the represented group is a substantial proportion of the members of that industry, that part of an industry or those industries;

11 Subparagraph 17(2)(c)(i)

Before “are exporting”, insert “are ready to export eligible products, or”.

12 Paragraph 17(2)(d)

Repeal the paragraph.

13 Subsection 17(3)

Repeal the subsection.

14 Subsection 55(1)

Omit “paragraph 13(5)(b) or 48(5)(b)”, substitute “paragraph 10(3)(c) or 48(4)(b)”.

15 After subsection 55(1)

Insert:

Fitness for grant

- (1A) For the purposes of paragraph 97(d) of the Act, a decision of the CEO of Austrade under subsection 13(2), that a person is unfit to receive a grant, is prescribed.

Part 2—Eligible expenses relating to representative bodies

Export Market Development Grants Rules 2021

16 Section 4

Insert:

approved export training by a person that is a representative body means export training activities delivered by, or on behalf of, the representative body that are activities in respect of which the representative body is a grantee.

17 Section 37 (heading)

Omit “**training activities**”, substitute “**export training**”.

18 Paragraph 37(1)(b)

Repeal the paragraph, substitute:

(b) the expense is in respect of approved export training by the person.

19 Paragraph 37(2)(b)

Omit “**training**”, substitute “**export training**”.

20 Subsection 37(3)

Omit “**particular training**”, substitute “**particular approved export training by a representative body**”.

21 Subsection 37(3)

Omit “**a representative body**”, substitute “**the representative body**”.

22 At the end of Part 4

Add:

47A Representative bodies—expenses incurred for grantees

An expense of a person that is a representative body is excluded if the expense is incurred for a member of the representative body that is a grantee at that time.

Part 3—Grant agreements

Export Market Development Grants Rules 2021

23 Sections 48 to 52

Repeal the sections, substitute:

48 Requirements for grant agreements

Maximum period of agreement

- (1) For the purposes of paragraph 9(2)(b) of the Act, a grant agreement must not be for a period longer than 2 years.

Limit on total amount of grants

- (2) 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.
- (3) Subsection (2) does not apply if the grantee is a representative body.
- (4) For the purposes of subsection (2):
 - (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 Categories of grant agreements

- (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) 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.
- (3) 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.
- (4) A grant agreement is a representative agreement if the grantee is a representative body.

24 Subsections 53(2) and (3)

Repeal the subsections, substitute:

- (2) Subject to subsection (3), the total amount of the instalments payable under the agreement in respect of a financial year is half of the total amount of the grantee's agreed eligible expenses in relation to eligible products for the financial year.
- (3) The amount of an instalment is reduced as needed to give effect to:
 - (a) subsection 48(2) (limit on total amount of grants payable); and
 - (b) section 54 (failure to spend agreed amount).

Part 4—Other amendments

Export Market Development Grants Rules 2021

25 Paragraph 19(1)(d)

Omit “at least 3”, substitute “all”.

26 Subparagraph 19(1)(d)(iv)

Omit “significant”.

27 Section 28

Omit “in a financial year”.

Part 5—Application of amendments

Export Market Development Grants Rules 2021

28 Sections 56 and 57

Repeal the sections, substitute:

56 Application of amendments made by the *Export Market Development Grants Amendment Rules 2024*

- (1) The amendments made by the *Export Market Development Grants Amendment Rules 2024* apply in relation to applications made in response to an invitation issued on or after the commencement of that instrument.
- (2) A reference in the definition of ***disqualifying conviction*** in subsection 13(4) to a conviction of a person includes a reference to a conviction of the person before or after the commencement of that instrument.
- (3) A reference in paragraph 13(4)(b) 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 that instrument.