EXPLANATORY STATEMENT

Export Market Development Grants (Genuinely Carrying on a Business) Guidelines 2018

Authority

The Export Market Development Grants (Genuinely Carrying on a Business) Guidelines 2018 is made by the Minister for Trade, Tourism and Investment under paragraph 101(1)(a) of the Export Market Development Grants Act 1997 (the EMDG Act).

Purpose

This legislative instrument details the guidelines to be complied with and the matters the Chief Executive Officer (CEO) of Austrade must have regard to when forming an opinion, for paragraphs 7(1)(a) or (4)(aa) of the EMDG Act, on whether a person is genuinely carrying on a business in Australia.

Background

The EMDG Act provides for grants to eligible Australian businesses which have incurred eligible expenses promoting the export of their Australian goods, services, intellectual property rights and know-how. The grant is a partial reimbursement of the expenses incurred.

Entitlement to a grant depends on (among other things) whether a person is genuinely carrying on a business in Australia. Matters the CEO of Austrade must consider include: the activities the person claims constitute the activities of the business; whether any income is earned by the business and whether that earning of income takes place substantially in Australia; and the nature and size of the assets of the business and whether those assets are located substantially in Australia.

In remaking this instrument, the number of people employed by the business and how many of these employees are employed in Australia has been added as a matter the CEO of Austrade must consider.

Decisions in relation to whether a person is genuinely carrying on a business in Australia are subject to review in the Administrative Appeals Tribunal.

Commencement

The Guidelines is made to repeal and replace the Export Market Development Grants Act 1997 – Determination 1/1997 GCB – Guidelines for forming an opinion whether an applicant is genuinely carrying on business in Australia which is due to sunset on 1 April 2019.

The Guidelines apply when working entitlement to a grant in respect of an application for a grant made on or after 1 July 2018.

Consultation

Austrade conducted extensive stakeholder consultations before remaking this instrument, including the proposal to add an additional matter that the CEO of Austrade must consider. All stakeholder responses supported the proposed change to this instrument.
Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required (reference: OBPR ID 22807).

This Guideline is a Legislative Instrument for the purposes of the Legislation Act 2003.

This Guideline is compatible with human rights and freedoms recognised or declared under section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. A full statement of compatibility is set out in Attachment A.
Statement of Compatibility with Human Rights


Export Market Development Grants (Genuinely Carrying on a Business) Guidelines 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2001.

Overview of the Legislative Instrument

The Legislative Instrument provides guidelines for the Chief Executive Officer of Austrade to use in determining whether a person is genuinely carrying on business in Australia.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.