

30 May 2013

Standing committee on Foreign affairs, defence and trade
Parliament House
Canberra, ACT 2600

Export Market Development Grants Amendment Bill 2013.

Thank you for the opportunity to comment on the bill referenced above. I write as both an EMDG consultant and advocate for the EMDG program.

The senate has asked the committee to consider three factors in particular so I will each of these in turn.

- a) Consultation process with industry and stakeholders. Export Solutions were not consulted with regard to changes in the legislation. We are a national EMDG grants consulting firm that lodge grants in all states, employs 10 people and last year lodged 170 of the total 3,200 or so grants lodged. We are quite possibly the largest EMDG consulting firm and in addition we also assist Australian exporters at about 27 large international trade shows annually, including Food Hotel Asia, Hofex (Hong Kong), Communicasia, Mining Indonesia.
- b) Impact of the changes on exporters. There are 8 changes proposed and I have addressed only the four I believe will directly affect the exporter.
 - 1) Increase in the number of grants to 8: This is positive and will be of benefit to many exporters.
 - 2) Exclude expenses relating to promotion of sales in USA/Canada/European Union (restricted zones) in grants 6, 7 & 8.
 - i) As a general overview I am not sure what this sets out to achieve. The premise that the change supports Australia's push into Asia does not make sense. The change may indeed be counterproductive in that exporters will tackle the restricted zones first and receive 5 years of assistance and then move on to Asia in years 6,7 and 8. If they begin marketing in Asia then support for marketing to restricted zones in later years will not be available.
 - ii) The change will make it very difficult to administer in grant years 6,7 and 8 and will be time consuming and frustrating for applicants. The onus of proof is always on the applicant and in the example given they will have to demonstrate what % of a trade fair held in the USA relates to marketing to countries outside the restricted zones. The trade fair organiser does not have records this detailed and even if they did, would be difficult to get hold of. This is however one of the more simple examples, trying to apportion travel costs where the client visit numerous regions around the world will be near impossible and again add to the time and complexity of the application and the audit. A better suggestion would be to allow "expenses" to all countries in years 6,7 and 8 but disallow the export earnings from these restricted zones. Again I am not sure what the purpose of the change is but if it is budgetary then this will achieve a similar goal and is a much simpler solution.

3) Remove the limit on administrative expenditure from the legislation. As I understand it the administrative budget is currently 5% of the funding pool of \$125M for the EMDG program. The change will enable the Minister to divert more funds from exporters to pay for additional administration costs. Changes to the program should be aimed at reducing the administrative expenditure not increasing it. Two of the proposed changes will certainly add to the administrative costs those being, 1) excluding expenses in restricted zones and 2) "the fit and proper person" test.

4) Prevent the payment of grants to applicants engaging an EMDG consultant considered to be "Not a fit and Proper person". Although I believe it is minor issue for the Exporters themselves Austrade appear to spending much of their endeavours on administration of consultants rather than efficient administration of the EMDG program. The relationship with the consultant is surely the clients business rather than Austrades. In addition I think it raises issues for Austrade should a client pursue them on the grounds that the applicants consultant, deemed fit and proper by Austrade, turns out to be anything but and the applicant suffers a financial loss because of it.

- c) Structure of the "Not fit and Proper person" test. The "Not Fit and Proper person" test should be read in conjunction with the EMDG legislative instruments "Export Market Development Grants (extended lodgement and consultant quality Incentive) determination 2012" a 20 page document signed by Acting CEO of Austrade on 13/12/12. (attachment 1)
The issue is the "test" has no structure. Giving the CEO of Austrade the authority to deem a consultant "Not fit and proper" without a very clear set of guidelines is perilous.

Thanks you again for the opportunity to comment and I would welcome the chance to contribute our thoughts on any future changes to the EMDG program.

I am also happy to take your call on any of the points raised above.

Yours Sincerely

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Export Market Development Grants (Extended Lodgement and Consultant Quality Incentive) Determination 2012¹

Export Market Development Grants Act 1997

I, Laurie Smith, Acting Chief Executive Officer of Austrade, make the following determination under subsection 70 (4) of the *Export Market Development Grants Act 1997*.

Dated

13 / 12 / 2012

Acting Chief Executive Officer of Austrade

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Part 1 Preliminary

1.1 Name of determination

This determination is the *Export Market Development Grants (Extended Lodgement and Consultant Quality Incentive) Determination 2012*.

1.2 Commencement

This determination commences on the day after it is registered.

1.3 Definitions

In this determination:

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

applicant for approval means an individual who makes an application to the CEO of Austrade under subsection 3.1 (1) for approval as a participating EMDG consultant.

applicant for grant means a person who makes an application to the CEO of Austrade under subsection 70 (1) of the Act for a grant in respect of a grant year.

associate: see subsection 87AA (3) of the Act.

consultant means an individual who assists an applicant for grant to make an application.

fit and proper person means a person who the CEO of Austrade decides is a fit and proper person in accordance with subsection 3.5 (1).

grant amount claimed means the total grant amount claimed by an applicant for grant in the application for grant.

participating EMDG consultant means an individual who has been approved as a participating EMDG consultant under subsection 3.6 (1).

type 1 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.

Note For the definitions of the following terms, see subsection 107 (1) of the Act:

- CEO of Austrade
- grant
- person
- provisional grant amount
- related company
- related company group
- relative
- under insolvency administration.

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1.4 Grant adjustment rate

- (1) The grant adjustment rate for a grant year is worked out using the formula:

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

where:

A is the total of grant amounts claimed in the relevant applications for which:

- (a) Austrade has conducted a type 1 audit; and
- (b) Austrade has issued a notice that the CEO of Austrade has made a determination under paragraph 80 (1) (c) of the Act; and
- (c) either:
 - (i) the right of the applicant for grant to apply to the Administrative Appeals Tribunal under section 99 of the Act, or to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*, has expired without the applicant lodging an appeal; or
 - (ii) any court or tribunal proceeding in relation to the correctness or validity of the determination has been finally determined.

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.

- (2) For subsection (1), if:

- (a) an applicant for grant becomes insolvent after the date of application for the grant; and
- (b) the whole or a part of the provisional grant amount determined by Austrade is nil for that reason;

the part of the provisional grant that is nil, and the corresponding grant amount claimed, are to be disregarded.

- (3) For subsection (1), if:

- (a) an applicant for grant ceases to hold an ABN after the date of application for the grant; and
- (b) the whole or a part of the provisional grant amount determined by Austrade is nil for that reason;

the part of the provisional grant that is nil, and the corresponding grant amount claimed, are to be disregarded.

- (4) For subsection (1), if:

- (a) a disqualifying conviction is outstanding against an applicant for grant; and
- (b) the whole or a part of the provisional grant amount determined by Austrade is nil for that reason;

the part of the provisional grant that is nil, and the corresponding grant amount claimed, are to be disregarded.

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- (5) For subsection (1), if:
- (a) the CEO of Austrade:
 - (i) has determined, in accordance with guidelines determined under paragraph 101 (1) (bb) of the Act, that an applicant for grant is not a fit and proper person to receive a grant; or
 - (ii) is satisfied that the participating EMDG consultant would no longer be eligible to be approved as a participating EMDG consultant because the participating EMDG consultant would no longer be a fit and proper person in accordance with section 3.5; and
 - (b) the whole or a part of the provisional grant amount determined by Austrade is nil for that reason;
the part of the provisional grant that is nil, and the corresponding grant amount claimed, are to be disregarded.
- (6) For subsection (1), if the provisional grant amount determined by the CEO of Austrade for a particular grant is greater than the amount claimed by the applicant, the grant amount is taken to be the amount claimed by the applicant.
- (7) For subsection (1), if the CEO of Austrade is satisfied, on the basis of the information provided in an application for grant, that:
- (a) it would be unreasonable for a particular application for grant to be counted in factor **A**; or
 - (b) it would be unreasonable for a particular grant amount to be counted in factor **B**;
- the CEO of Austrade must adjust factor **A** or **B** accordingly before working out the grant adjustment rate.
- (8) The grant adjustment rate for the grant year is to be:
- (a) first worked out 13 months after the end of the grant year; and
 - (b) revised by Austrade in each subsequent month after it completes its consideration of each outstanding application in respect of the grant year.

Section 2.1

Part 2 Time for making application

2.1 Extended time for applications made with participating EMDG consultants

- (1) For subsection 70 (4) of the Act:
 - (a) an application to the CEO of Austrade under subsection 70 (1) of the Act for a grant in respect of a grant year may be made within 8 months after the end of the grant year in the circumstance set out in subsection (2); and
 - (b) an application made more than 8 months after the end of the grant year is not a valid application.
- (2) The circumstance is that the application is made with the assistance of an individual who:
 - (a) is a participating EMDG consultant when the application is made; and
 - (b) is registered as a participating EMDG consultant under section 6.2; and
 - (c) acts as a consultant for the application; and
 - (d) is recorded as a consultant in the application form; and
 - (e) has signed the consultant declaration in the application form.
- (3) If the application is made with the assistance of more than one individual who is described in subsection (2), the CEO of Austrade must treat one of those individuals as:
 - (a) the principal participating EMDG consultant; and
 - (b) the participating EMDG consultant for the purpose of working out the grant adjustment rate for a grant year.

Note Having a principal participating EMDG consultant will allow Austrade to coordinate its consideration of an application through a single contact point.

Part 3 Participating EMDG consultants

3.1 Application for approval as participating EMDG consultant

- (1) An individual may apply to the CEO of Austrade for approval as a participating EMDG consultant.
- (2) The application must:
 - (a) be in a form, and be made in a manner, approved by the CEO of Austrade; and
 - (b) be accompanied by:
 - (i) the information (if any) specified in the application form; and
 - (ii) the documents (if any) specified in the application form; and
 - (c) authorise the CEO of Austrade to independently verify the accuracy and completeness of information and documents provided; and
 - (d) be lodged by any date, or between any dates, specified in the form.

Note The application form will explain the effect of section 3.2.

- (3) The application must also include an undertaking that, if the applicant for approval ceases to be a participating EMDG consultant, the applicant for approval will notify:
 - (a) each client for whom the individual acts as a participating EMDG consultant; and
 - (b) each other person:
 - (i) who is not currently a client; and
 - (ii) for which the individual has lodged an application for grant in the current or preceding grant year;of that fact within 14 days.

3.2 Further information or documents

- (1) The CEO of Austrade may, by written notice given to an applicant for approval, ask the applicant to give to the CEO specified information, or to make available to the CEO specified books, records or documents, that the CEO may require to perform his or her functions under this Part.
- (2) The CEO of Austrade may, by written notice to an applicant for approval, ask the applicant to give to the CEO any written consent (whether of the applicant for approval or an associate of the applicant for approval) specified in the notice that the CEO requires to enable the CEO to obtain information to determine whether the applicant for approval is a fit and proper person as explained by sections 3.4 and 3.5.

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- (3) The CEO of Austrade is not required to consider an application for approval, or consider an application further, while waiting for further information, or a book, record, documents or consent, to be given.

3.3 Criteria for assessment of application—general

- (1) An applicant for approval as a participating EMDG consultant must be:
- (a) at least 18; and
 - (b) an Australian citizen or permanent resident of Australia.
- (2) The applicant must be a fit and proper person, as explained by sections 3.4 and 3.5.
- (3) The applicant:
- (a) must have acted as a consultant for at least 5 applications for grant made in respect of the last completed grant year before the financial year in which the application for approval is made; and
 - (b) must have been:
 - (i) at least 18; and
 - (ii) an Australian citizen or permanent resident of Australia; when acting as a consultant for each of those applications; and
 - (c) must have been recorded as a consultant in the application form; and
 - (d) must have signed the consultant declaration in the application form.
- (4) If the applicant applies for approval in the 2013–14 financial year, the applicant must show that its grant adjustment rate for the 2012–13 grant year does not exceed 9%.

Note The grant adjustment rate is explained in section 1.4.

- (5) If the applicant applies for approval in the 2014–15 financial year, the applicant must show that its grant adjustment rate for the 2013–14 grant year does not exceed 7%.

Note The grant adjustment rate is explained in section 1.4.

- (6) If the applicant applies for approval in the 2015–16 financial year, or a later financial year, the applicant must show that its grant adjustment rate for the last completed grant year before the application is made does not exceed 5%.

Note The grant adjustment rate is explained in section 1.4.

3.4 Criteria for assessment as fit and proper person

- (1) For the purposes of considering an application for approval as a participating EMDG consultant, the CEO of Austrade must decide whether the applicant for approval is a fit and proper person.

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- (2) The CEO of Austrade must have regard to the matters set out in Part 3 of the *Export Market Development Grants (Associate and Fit and Proper Person) Guidelines 2004*.
- (3) The applicant for approval must not be disqualified under section 78 of the Act from preparing applications for grant.
- (4) The CEO of Austrade must be satisfied that the applicant for approval is not party to a scheme or arrangement which has the effect of negating the purpose of this determination or avoiding or defeating any of the provisions of this determination.
- (5) The CEO of Austrade must be satisfied that the applicant for approval does not operate under a policy which has the effect of negating the purpose of this determination or avoiding or defeating any of the provisions of this determination.
- (6) The CEO of Austrade must be satisfied that the applicant for approval has not been party to any act or thing, and has not provided advice to any applicant for grant, for the purpose of obtaining:
 - (a) a grant to which the applicant for grant is not entitled; or
 - (b) an amount of a grant to which the applicant for grant is not entitled.
- (7) The CEO of Austrade must be satisfied that the applicant for approval genuinely acted as a consultant in the circumstances described in subsection 3.3 (3).
- (8) The CEO of Austrade may also have regard to any matter not mentioned in subsections (2) to (7) that is relevant to the personal, commercial, financial or professional character of:
 - (a) the applicant for approval; or
 - (b) a relative of the applicant for approval; or
 - (c) another person or body that manages or conducts the applicant for approval's interests as a consultant; or
 - (d) another person who is in a position to direct or influence the preparation or making of applications for which the person acts as a consultant; or
 - (e) another person who has a commercial relationship with the applicant for approval relating to the preparation of applications for grant.

3.5 Assessment as fit and proper person

- (1) The CEO of Austrade must decide that an applicant for approval is a fit and proper person if:
 - (a) the applicant for approval is not disqualified under section 78 of the Act from preparing applications for grant; and
 - (b) the CEO is satisfied as to the matters set out in subsections 3.4 (2) to (7); and

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- (c) the CEO is satisfied as to the personal, commercial, financial or professional character of each person mentioned in paragraphs 3.4 (8) (a) to (e).
- (2) If subsection (1) does not apply, the CEO of Austrade must decide that the applicant for approval is not a fit and proper person.

3.6 Decision on application for approval*Decision*

- (1) The CEO of Austrade must approve an applicant for approval as a participating EMDG consultant if:
 - (a) the application was made in the form and manner approved by the CEO; and
 - (b) the requirements of section 3.3 are met.
- (2) If subsection (1) does not apply, the CEO of Austrade must refuse to approve the applicant for approval.

Notification of approval

- (3) If the CEO of Austrade approves the applicant for approval, the CEO must, within one month, give the applicant for approval a notice of participation setting out:
 - (a) the day on which the applicant for approval becomes a participating EMDG consultant; and
 - (b) the period (not exceeding 3 years) for which the applicant for approval is a participating EMDG consultant; and
 - (c) the conditions to which the approval is subject.

Effect of approval

- (4) If the CEO of Austrade approves the applicant for approval, the applicant for approval is a participating EMDG consultant:
 - (a) from the day specified in the notice of participation; and
 - (b) until the earlier of the following occurs:
 - (i) the participating EMDG consultant's approval is cancelled under Part 5;
 - (ii) the period set out in the notice of participation ends.

Note The applicant will also be registered as a participating EMDG consultant under Part 6.

- (5) An approval as a participating EMDG consultant is personal to the consultant and cannot be transferred to another person.

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Notification of refusal

- (6) If the CEO of Austrade refuses to approve an applicant for approval as a participating EMDG consultant, the CEO must, within one month, give the applicant for approval a notice setting out:
- (a) the decision; and
 - (b) the reasons for the decision.

Section 4.1

Part 4 Conditions of approval

4.1 Conditions

This Part sets out conditions to which the approval of an individual as a participating EMDG consultant is subject.

4.2 Maximum grant adjustment rate

- (1) If the applicant applies for approval in the 2012–13 financial year:
 - (a) the grant adjustment rate for all applications for grant made in respect of the 2012–13 grant year for which the participating EMDG consultant acted as:
 - (i) a participating EMDG consultant; or
 - (ii) a consultant as defined in section 1.3;must not exceed 9%; and
 - (b) the grant adjustment rate for all applications for grant made in respect of the 2013–14 grant year for which the participating EMDG consultant acted as:
 - (i) a participating EMDG consultant; or
 - (ii) a consultant as defined in section 1.3;must not exceed 7%; and
 - (c) the grant adjustment rate for all applications for grant made in respect of each subsequent grant year for which the participating EMDG consultant acted as:
 - (i) a participating EMDG consultant; or
 - (ii) a consultant as defined in section 1.3;must not exceed 5%.

Note The grant adjustment rate is explained in section 1.4.

- (2) If the applicant applies for approval in the 2013–14 financial year:
 - (a) the grant adjustment rate for all applications for grant made in respect of the 2012–13 grant year for which the participating EMDG consultant acted as:
 - (i) a participating EMDG consultant; or
 - (ii) a consultant as defined in section 1.3;must not exceed 9%; and
 - (b) the grant adjustment rate for all applications for grant made in respect of the 2013–14 grant year for which the participating EMDG consultant acted as:
 - (i) a participating EMDG consultant; or

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- (ii) a consultant as defined in section 1.3;
must not exceed 7%; and
- (c) the grant adjustment rate for all applications for grant made in respect of each subsequent grant year for which the participating EMDG consultant acted as:
 - (i) a participating EMDG consultant; or
 - (ii) a consultant as defined in section 1.3;
must not exceed 5%.

Note The grant adjustment rate is explained in section 1.4.

- (3) If the applicant applies for approval in the 2014–15 financial year:
 - (a) the grant adjustment rate for all applications for grant made in respect of the 2013–14 grant year for which the participating EMDG consultant acted as:
 - (i) a participating EMDG consultant; or
 - (ii) a consultant as defined in section 1.3;
must not exceed 7%; and
 - (b) the grant adjustment rate for all applications for grant made in respect of each subsequent grant year for which the participating EMDG consultant acted as:
 - (i) a participating EMDG consultant; or
 - (ii) a consultant as defined in section 1.3;
must not exceed 5%.

Note The grant adjustment rate is explained in section 1.4.

- (4) If the applicant applies for approval in the 2015–16 financial year, the grant adjustment rate for all applications for grant made in respect of the 2014-15 grant year, and each subsequent grant year, for which the participating EMDG consultant acted as:
 - (a) a participating EMDG consultant; or
 - (b) a consultant as defined in section 1.3;
must not exceed 5%.

Note The grant adjustment rate is explained in section 1.4.

- (5) If the applicant applies for approval in a financial year following the 2015-16 financial year, the grant adjustment rate for all applications for grant made in respect of the last completed grant year before the application is made, and each subsequent grant year, for which the participating EMDG consultant acted as:
 - (a) a participating EMDG consultant; or
 - (b) a consultant as defined in section 1.3;
must not exceed 5%.

Note The grant adjustment rate is explained in section 1.4.

Section 4.3

4.3 Form and manner of lodging applications for grant

The participating EMDG consultant must ensure that each application for grant for which the participating EMDG consultant acts as a participating EMDG consultant is made in an electronic form, and is made in a manner, approved by the CEO of Austrade.

4.4 Continuity of practice

- (1) The participating EMDG consultant must act as a participating EMDG consultant for at least 5 applications for grant in respect of each grant year.
- (2) The CEO of Austrade may disregard subsection (1) if:
 - (a) the participating EMDG consultant did not act as a participating EMDG consultant for at least 5 applications for grant in respect of a grant year; and
 - (b) the CEO is satisfied that the participating EMDG consultant was unable to offer his or her services as a consultant during the grant year because of illness, injury or for another personal reason.

4.5 Giving information

- (1) If an event occurs, or a circumstance comes into existence, which may affect whether the participating EMDG consultant would be regarded as a fit and proper person as explained by sections 3.4 and 3.5, the participating EMDG consultant must notify the CEO of Austrade about the event or circumstance within 14 days, in a form and manner approved by the CEO.
- (2) If the CEO of Austrade asks a participating EMDG consultant, in writing, for information that the CEO requires to enable the CEO to consider whether the participating EMDG consultant is complying with the conditions in this Part, the participating EMDG consultant must give the CEO the information as soon as practicable.

4.6 Notification of ceasing to be participating EMDG consultant

If the individual ceases to be a participating EMDG consultant, the individual must notify:

- (a) each client for whom the individual acts as a participating EMDG consultant; and
 - (b) each other person:
 - (i) who is not currently a client; and
 - (ii) for which the individual has lodged an application for grant in the current or preceding grant year;
- of that fact within 14 days.

Part 5 End of approval as participating EMDG consultant

5.1 Mandatory cancellation of approval

- (1) The CEO of Austrade must cancel the approval of a participating EMDG consultant if the CEO is satisfied that the participating EMDG consultant would no longer be eligible to be approved as a participating EMDG consultant.
- (2) The CEO of Austrade must cancel the approval of a participating EMDG consultant if the CEO is satisfied that the participating EMDG consultant has breached a condition to which the approval is subject.
- (3) The CEO of Austrade must cancel the approval of a participating EMDG consultant if the CEO is satisfied that the participating EMDG consultant:
 - (a) made a statement that was false or misleading; or
 - (b) used a book, record or document that contained information that was false or misleading;in, or related to, the application for approval as a participating EMDG consultant.
- (4) The CEO must cancel the approval as soon as practicable.

5.2 Discretionary cancellation of approval

- (1) The CEO of Austrade may cancel the approval of a participating EMDG consultant if the CEO is satisfied that the participating EMDG consultant:
 - (a) made a statement that was false or misleading; or
 - (b) used a book, record or document that contained information that was false or misleading;that was not in, or was not related to, the application for approval as a participating EMDG consultant.
- (2) The CEO of Austrade may cancel the approval of a participating EMDG consultant if the CEO is satisfied that the participating EMDG consultant:
 - (a) failed to give Austrade information that would materially affect the eligibility of:
 - (i) an applicant for grant; or
 - (ii) expenditure claimed in an application for grant;before the application was determined or before a review of a decision in relation to the application was completed; and
 - (b) would reasonably be expected to have been aware of the information before the application was determined.

Section 5.3

- (3) The CEO of Austrade may cancel the approval of a participating EMDG consultant if the CEO is satisfied that the participating EMDG consultant has been involved, in the course of acting as a consultant, in seeking further consideration of one or more decisions made in relation to the amount payable in respect of an application for a grant:
 - (a) for the purpose of ensuring that the grant adjustment rate for applications for grant for which the participating EMDG consultant has acted as a participating EMDG consultant does not exceed the maximum rate set out in subsection 4.2 (1) or (2); or
 - (b) for purposes that include that purpose.
- (4) If the CEO of Austrade proposes to cancel the approval of a participating EMDG consultant, the CEO must, within one month, give the participating EMDG consultant a written notice:
 - (a) setting out the proposed decision and the reasons for the decision; and
 - (b) advising the participating EMDG consultant that he or she may, by a specified date (being not less than 14 days after the notice is given), make a submission to the CEO in relation to the proposed cancellation.
- (5) After the date specified in a notice under subsection (4):
 - (a) if the participating EMDG consultant has made a submission in relation to the proposed cancellation, the CEO of Austrade must consider the submission; and
 - (b) whether or not the participating EMDG consultant has made a submission, the CEO of Austrade must decide whether to cancel the approval; and
 - (c) within 14 days after making that decision, the CEO of Austrade must give the participating EMDG consultant written notice of the decision, including the reasons for the decision.
- (6) The cancellation of the approval of a participating EMDG consultant takes effect one month after the date the notice is given to the participating EMDG consultant.

Note An applicant for approval as a participating EMDG consultant must give a written undertaking that, if the applicant ceases to be a participating EMDG consultant, the applicant will notify all of its clients for which it acts as a participating EMDG consultant, and certain former clients, of that fact within 14 days—see subsection 3.1 (3) and section 4.6.

5.3 Cancellation after withdrawal from being participating EMDG consultant

- (1) A participating EMDG consultant may notify the CEO of Austrade, in writing, that the participating EMDG consultant wishes to withdraw from being a participating EMDG consultant.

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- (2) The approval of the participating EMDG consultant is taken to be cancelled with effect from:
- (a) the day stated in the notification; or
 - (b) if no day is stated—the day the CEO of Austrade receives the notification.

Note An applicant for approval as a participating EMDG consultant is required to give a written undertaking that, if the applicant ceases to be a participating EMDG consultant, the applicant will notify all of its clients, and certain former clients, for which it acts as a participating EMDG consultant of that fact within 14 days—see subsection 3.1 (3) and section 4.6.

Section 6.1

Part 6 Register of participating EMDG consultants

6.1 Register

- (1) The CEO of Austrade must:
 - (a) make a register of participating EMDG consultants; and
 - (b) publish the register on the website of Austrade.
- (2) The register must be kept in the form and manner that the CEO of Austrade directs.

6.2 Content of register

- (1) The CEO of Austrade must include in the register the following information for an individual who has been approved as a participating EMDG consultant:
 - (a) name;
 - (b) business and email addresses;
 - (c) Australian Business Number (if any);
 - (d) the period for which the participating EMDG consultant is approved;
 - (e) each period (if any) for which the participating EMDG consultant has previously been approved.
- (2) The register must also include information about the number of applications for grant, in the last completed grant year, for which the participating EMDG consultant acted as a participating EMDG consultant.
- (3) The information mentioned in subsection (2) must be presented in the register in the way the CEO of Austrade directs.

Example

It may be appropriate to use generalised statistics within which the number for an individual participating EMDG consultant occurs, stating that the number of applications is within a band of numbers such as 1–10 applications, 11–20 applications, and so on.

Part 7 Reconsideration by CEO of decisions

7.1 Reconsideration

- (1) This section applies to:
 - (a) a decision under subsection 3.6 (2) to refuse to approve an applicant as a participating EMDG consultant; and
 - (b) a decision under subsection 5.1 (4) or section 5.2 to cancel the approval of a participating EMDG consultant.
- (2) A person who is affected by the decision may, if dissatisfied with the decision, apply to the CEO of Austrade to reconsider it.
- (3) The application must be made in writing and received by the CEO of Austrade within:
 - (a) the period of 30 days after the day the person first receives notice of the decision; or
 - (b) any further period as the CEO allows.
- (4) The application must set out the reasons for the application.
- (5) If the CEO of Austrade receives an application:
 - (a) the CEO of Austrade must reconsider the decision; or
 - (b) if the CEO made the decision, the CEO must direct another person (the **reviewer**) who performs duties in Austrade, and who did not make the decision, to reconsider the decision.
- (6) The CEO of Austrade or the reviewer must:
 - (a) reconsider the decision as soon as practicable; and
 - (b) confirm or vary the decision in such manner as the CEO or reviewer thinks fit.
- (7) The CEO of Austrade or the reviewer:
 - (a) may, by written notice given to the applicant, ask the applicant to give to the CEO or reviewer specified information, or to make available to the CEO or reviewer specified books, records or documents, that the CEO or reviewer may require to perform his or her functions under this section; and
 - (b) may, by written notice to the applicant, ask the applicant to give to the CEO or reviewer any written consent (whether of the applicant or an associate of the person) specified in the notice that the CEO or reviewer requires to enable the CEO or reviewer to obtain information to determine whether the applicant is a fit and proper person as explained by sections 3.4 and 3.5; and
 - (c) is not required to reconsider the decision while waiting for information, or a book, record, documents or consent, to be given.

Section 7.1

- (8) If the CEO of Austrade or a reviewer makes a decision on reconsideration, the CEO of Austrade must, as soon as practicable, give the applicant a notice setting out:
- (a) the decision; and
 - (b) the reasons for the decision.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.