

10 June 2021

Ms Lynne Ashpole
Head of Policy and Coordination Branch
Austrade

By email: EMDGReform@austrade.gov.au

Dear Ms Ashpole

Draft Export Market Development Grant (EMDG) Guidelines

We refer to the draft guidelines above and welcome the opportunity to provide feedback. Screen Producers Australia (SPA) is grateful for the ongoing engagement coordinated by Austrade as it implements the new EMDG scheme.

Eligibility of offset payments

As you are aware, SPA has previously raised concerns regarding the continued ability of screen exporters to continue to claim as an eligible expense, expenses incurred as offsets against royalties. As we have previously noted, this is a common practice in film and television program distribution whereby an international sales agent will put forward marketing finance, with the exporter then required to pay this back as royalties are earned.

We have previously received verbal advice from Austrade during stakeholder consultations that this expenditure would likely qualify as an eligible expense in future. However, given the amendments to paragraph 58(2)(b) of the *Export Market Development Grants Act 1997* (EMDG Act), we express a strong interest in this matter being clarified in the guidelines.

As you would be aware, current paragraph 58(2)(b) of the EMDG Act makes clear that an expense is incurred in circumstances including where the amount is “set off, with the written consent of the person (creditor) to whom it is payable, against money owed by the creditor or another person to the applicant.”

It is our understanding that this paragraph will be repealed when the provisions of the Export Market Development Grants Legislation Amendment Bill 2020 come into force later this year.

This leaves us in a position of formal uncertainty regarding the continued eligibility of offset loans under the scheme going forward.

Whilst we appreciate the verbal advice which has been provided, and the ongoing willingness of Austrade to understand our concerns, we have a strong preference towards ensuring certainty and clarity for exporters and to that end, express our strong interest in written confirmation in the guidelines of the continued eligibility of expenses incurred via offsets.

Promotion of royalty or licence fees

We also note the upcoming repeal of section 38 of the EMDG Act, which deals with the ability to incur ongoing marketing expenses after initial licensing deals with an international licensee.

We wish to note the possibility that the repeal of section 38 and the retention of section 46 (now section 42) may inadvertently mean that these expenses may no longer be eligible.

We request the guidelines specifically state that the promotion of royalty or licence fees after the licensing of intellectual property, remains an eligible activity.

We refer to and support the submission from Cross and Co Lawyers which addresses this anomaly in further detail.

Thank you again for the opportunity to provide feedback on the Guidelines. If you have any questions or would like further information, please contact me (holly.brimble@screenproducers.org.au).

Yours sincerely

Holly Brimble
Director of Policy
Screen Producers Australia