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PARLIAMENTARY SECRETARY FOR TRADE

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Committee Secretary
Senate Foreign Affairs, Defence and Trade Legislation Committee
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Dear Dr Dermody

Export Market Development Grants Amendment Bill 2013

As the Parliamentary Secretary for Trade with policy responsibility for the Export Market Development Grants Scheme, I would like to provide the following information to the Senate Committee to assist its consideration of the Export Market Development Grants Amendment Bill 2013. This submission substantially focuses on those areas which have been a feature of debate to date, and were nominated by the Selection of Bills Committee, namely:

1. the consultation process with industry and other stakeholders;
2. the possible impact on exporters, particularly small exporters; and
3. the structure and operation of the not fit and proper person provisions for consultants.

1. Consultation process with industry and other stakeholders

In its mid-year economic and fiscal outlook statement (MYEFO), the Government announced a reduction in the EMDG budget from \$150.4 million to \$125.4 million and the retargeting of the scheme to increase its focus on East Asian and emerging and frontier markets. This refocusing was broadly consistent with changes in Austrade's strategy and brought EMDG into closer strategic alignment with the Government's Asian century policy direction.

As part of its consideration of the operation of the legislation, Austrade consulted the following bodies:

- Australian Chamber of Commerce and Industry (ACCI) and its constituent members;
- Australian Industry Group (AiG)
- Export Council of Australia (ECA) and a subsidiary chapter of ECA, the Export Consultants Group (ECG)
- Australian Tourism Export Council (ATEC).

In Austrade's assessment, these bodies broadly represent the companies likely to be affected by the proposed legislation.

Austrade received a range of preferences for different options in the consultation process and considered these views in the recommendations it put to the Government.

A key issue in the design of the legislation was the issue of the different number of grants in the two different groups of markets i.e. five grants in the developed markets (USA, Canada and the EU) and eight grants in the East Asian, emerging and frontier markets. The key question was; which is preferable, that applicants be able to go to the developed markets in any five of their eight grants (option one), or should they be restricted to the first five of their eight grants (option two)?

Option one offers applicants the greatest commercial flexibility but at the cost of increased record keeping and auditing. Under option one, for Austrade to verify that applicants had not claimed more than five grants in developed markets would require that they keep sufficient details of their expenditure to determine the market it applied to. This may not always be straightforward, for example, where publications are printed and distributed to a number of markets, or internet marketing costs. It is also problematic because there are significant transitional audit issues where applicants claim in the first seven grant years under the new legislation (grant years are not necessarily sequential years). Applicants would have to be able to verify whether or not they have previously claimed in developed markets, noting that in the year the expenditure occurred, it was not the practice to keep market specific records. It should also be noted that the majority of EMDG applicants are small businesses. For these businesses, over the course of an eight year grant cycle, staff changes and record keeping system changes are likely as the business grows and this may impact on the practicality of applicants keeping sufficiently accurate records. Also, as a result of the increased audit workload, there is a significant likelihood that Austrade would require increased administrative resources to be able to process claims as quickly as it had in previous years. The increased administration costs would reduce funds available for grants.

Option 2 offers companies some reduced commercial flexibility but reduces the compliance and administrative load discussed above in that it is only necessary for companies claiming in grant years six, seven and eight to demonstrate that they have excluded expenses from developed markets at the time their claims are assessed. This may involve some additional assessment of these claims. However, Austrade does not have any experience or data on which to base an estimate. Due to the significantly fewer number of applicants in these later grant years, the impact on scheme administrative resources is considered to be lower with this option.

2. Impact on exporters, particularly small exporters

In considering the impact on exporters, particularly small exporters, Austrade drew on its own internal modelling of the effect of the legislation based on current applicants. Austrade also considered the views put by the industry bodies consulted.

There are three identifiable impacts that affect the number of claims to which exporters are entitled, these are:

- a) the increase in the number of claims in East Asian, emerging and frontier markets and the reduction in the number of claims in the developed markets;
 - b) the removal of event promoters; and
 - c) no further approval of joint ventures.
- a) Increase in the number of claims in East Asian, emerging and frontier markets and the reduction in the number of claims in the developed markets

Based on current applicants, the 3,123 applicants who would hypothetically be able to claim an EMDG grant under the proposed legislation:

- 154 applicants (4.9 per cent) would be able to claim an additional grant in East Asian emerging and frontier markets
- 366 applicants (11.7 per cent) would only be able to claim a reduced grant in years six, seven and eight, limited to their expenditure in East Asian and emerging and frontier markets and excluding the developed markets.

From the current (FY 2012/13) applicant population, 81 applicants (2.7 per cent) claimed only in developed markets in years six, seven and eight and would therefore be ineligible to claim any grants after year five.

The net result of these changes is that overall claim numbers are expected to increase by about 80 (2.6 per cent) per annum.

b) Removal of event promoters

Event promoters are an exception under the EMDG Act in that all other EMDG applicants, other than approved bodies, are required to be the principal in the export transaction. Event promoters are in effect agents for event holders, the body that actually owns the event being promoted. Event holders have always been, and remain, eligible to claim EMDG grants. Very few grants are paid to event promoters, an estimated six grants were paid this year and a similarly small number paid over the last five years (see Table 1). Each year EMDG pays approximately 3,000 to 4,000 grants.

Table 1 Event Holders and Event Promoters FY 2009-10 to FY 2012-13 Electronically Lodged Claims ¹	
Year	Event Promoters / agents (proposed not eligible)
2012-13 to date	3
2011-12	2
2010-11	3
2009-10	6
2008-09	11

1. Figures are for electronically lodged claims which are approximately 50 per cent of all claims lodged. Other claims do not identify this category of claimant.

The small number of event promoters create a disproportionate amount of red tape for the larger number of event holders, in that event holders need to be able to satisfy Austrade that the expenditure they are claiming has not also been claimed by an event promoter. This adds an additional degree of complexity to the recordkeeping required and the subsequent assessment of their claims.

c) No further approval of Joint Ventures

Joint ventures are few in number (see Table 2) and are promoted by a very small number of consultants. Austrade's experience in assessing these claims is that the consultants specialising in promoting these joint ventures are putting forward applications for joint ventures which do not adequately enable Austrade to assess their eligibility. Austrade increasingly finds that some joint ventures are being used as a vehicle to attempt to allow companies who have exhausted their allowed number of EMDG grants to enter an arrangement primarily to attempt to re-qualify for further grants.

Table 2 Approved Joint Ventures FY 2009-10 to FY 2012-13		
Year	Number of Joint Ventures	Number of members
2012-13	10	49
2011-12	10	49
2010-11	15	88
2009-10	18	107

3. Structure and operation of the not fit and proper person provisions

EMDG consultants prepare more than half (56 per cent) of all EMDG applications. As a result, the professional standards applied to the services they provide are a very significant influence on the public's perception of the integrity of the EMDG scheme. Public confidence in the integrity of the EMDG scheme is a significant factor in maintaining the support of government to continue the scheme's assistance to the 3,000 to 4,000 exporters who apply each year.

EMDG consultants are not licenced registrants. They overwhelmingly work on a success fee basis calculated as a percentage of the EMDG grant paid. Across the EMDG consulting industry, this average is estimated at ten per cent. EMDG consultants therefore have a significant financial interest in maximising the payment of grants to their clients. Unlike other agents such as tax agents, customs agents, migration agents and real estate agents, their obligations to clients are

not balanced by formal obligations to a regulatory body. In the absence of any regulation or effective self-regulation of the EMDG consulting industry, there does need to be some mechanism to protect the integrity of the scheme from those few cases where the actions of an EMDG consultant may bring the entire scheme into disrepute. It is appropriate for government to put in place such measures. Similar measures have applied to applicants for nine years.

There exists a current Consultant Code of Practice administered by the Code of Practice Administration Committee which is comprised of EMDG consultant representatives and Austrade. Approximately 23 per cent of currently practising consultants are signatories to the code. Consultants in breach of the code can have their participation suspended or cancelled. However this does not affect their ability to act as an EMDG consultant and lodge claims. The limited coverage of the code, and the lack of any effective sanction, results in the code having very little ability to protect the integrity of the EMDG scheme.

Austrade has administered the not fit and proper person provisions that apply to EMDG applicants for nine years. During this period, it has reviewed 75 cases with nine applicants being deemed not fit and proper persons to receive a grant, with decisions on four matters confirmed by Austrade following a Request for Review. In a further 16 cases the applicant failed to respond to Austrade's requests for information and Austrade applied Section 73 of the EMDG Act to refuse to consider the matter further. There are currently 27 matters under consideration. No applicant has appealed Austrade's decision under the not fit and proper person provisions to the Administrative Appeals Tribunal. As a result, Austrade brings a significant level of experience to the assessment of whether or not a consultant is a fit and proper person.

Currently, EMDG consultants are prevented from lodging claims on behalf of applicants if they have been convicted of an offence under the Corporations Act or the Crimes Act (see Part seven, Division two of the EMDG Act 1997). However the high cost of prosecution often results in matters not being pursued due to resource constraints. In addition, there are issues which may arise, as they have arisen in connection with applicants, outside of the Corporations Act or the Crimes Act, where the public would expect that the level of dishonesty or unacceptable behaviour was such that the continued participation of the consultant would tend to reduce the perceived probity of the scheme. These issues may include, for example, serial bankruptcy and the promotion of grant application schemes which are illegal under the EMDG Act. In addition, in the overwhelming majority of grant applications from consultants, Austrade is requested to pay the grant to the consultant on trust for the applicant. It would potentially reduce public confidence in the probity of the EMDG scheme for Austrade to continue to deal with, and forward grant monies to, consultants where Austrade was aware that those consultants had an unacceptable reputation.

Austrade acknowledges that finding a consultant a not fit and proper person would have a significant commercial impact on the consultant. Accordingly a number of safeguards apply, these are:

- natural justice applies, Austrade will provide any consultant it considers may be a not fit and proper person with the reasons that Austrade suspects they may be a not fit and proper person and will provide the consultants the opportunity to respond
- privacy rules apply
- if a consultant is found to be a not fit and proper person, they may request that the CEO of Austrade review the decision
- if they are unhappy with the CEO of Austrade's review, they may request a merits review at the Administrative Appeals Tribunal (AAT)
- they are also able to pursue action under the Administrative Decisions Judicial Review Act in the Federal Court.

The Australian Government Solicitor (AGS) has provided advice that the proposed provisions are consistent with Australia's international human rights undertakings.

The Parliamentary Joint Committee on Human Rights has reviewed the Bill and reported that it raises no significant human rights concerns.

Additional Issue

Changing the way the EMDG administrative budget is determined

The proposed legislation removes the cap on administrative expenses currently set at five per cent of the EMDG budget and proposes that the Minister have the power to set the budget for administrative expenses from time to time. The Minister will only be able to change the administrative budget with the agreement of the Minister for Finance and this change brings the EMDG scheme into line with other similar programs. The current proposal is that in financial year 2013-14, the administrative budget be set at six per cent.

The assessment of EMDG claims is inescapably a labour-intensive task; some 84 per cent of EMDG administrative expenses are staffing costs. The combination of a 17 per cent reduction in the administrative budget due to the reduction in the overall EMDG budget of \$25 million and a claim assessment workload similar to the current year, would make it impossible for Austrade to adequately manage financial and reputational risk or process claims in a timely way. Austrade would not be able to adapt processes or improve efficiency by such a significant amount in such a short period of time.

The other proposed changes in the legislation either do not affect exporters directly or are intended only to increase the reliability of the amounts claimed by exporters.

Concluding comments

Austrade considers that the proposed legislation achieves the Government's goals and imposes the least costs on SME exporters of all the available options. The overwhelming majority of EMDG applicants will not be affected by the legislation. The proposed changes address a number of administrative issues reducing compliance costs for several types of applicants and increasing the public's confidence in the probity of the applications prepared by consultants.

The proposed changes to the EMDG scheme bring it into closer alignment with the export efforts of Austrade, the Federal Government's lead export agency, and position the EMDG scheme to best support SME exporters take full advantage of the opportunities of the Asian century, and the potential contributions to increased employment and community prosperity.

I would be happy to provide further information should the Committee wish.

Yours sincerely

Kelvin Thomson