

Senate Foreign Affairs, Defence and Trade Legislation Committee
Inquiry into the Export Market Development Grants Amendment Bill 2013
7 June 2013
Question on Notice from Senators Stephens, Bishop and Xenophon to Austrade

Senator Bishop

Question 1

Could you, on notice, provide details of Austrade's not fit and proper issues in respect of EMDG consultants, in terms of:

- a. Their timing
- b. The nature of Austrade's concerns
- c. Actions taken by Austrade
- d. Whether Austrade advised the Minister
- e. Whether they were noted in Austrade Annual Reports?

Answer

- (1) (a-c) The timing, nature of, and action taken by Austrade in respect of not fit and proper concerns in regard to EMDG consultants are outlined in the table below. The examples provided are indicative of the nature of issues that have concerned Austrade. They are not exhaustive. In potential criminal matters, Austrade takes advice from the appropriate authorities. More details provided on these cases would amplify the reasons for Austrade's concerns, however for privacy and natural justice reasons, Austrade would prefer to release further information "in camera", should the Committee wish. Any future guidelines determined by the Minister, together with the facts, evidence available and natural justice processes should all be taken into account before a conclusion is reached.
- (d) Austrade briefed the Minister on the outcome of the trial relating to Consultant 4. In other cases, Austrade did not brief the Minister as no actual reportable breaches of the EMDG Act occurred, because no appropriate provisions in the Act were available.
- e) Annual Reports include the number of breaches of not fit and proper cases relating to grant applicants.

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Date	Consultant	Applicant	Narrative
2012	Consultant 1	Applicant A	<p>Email admission by the consultant of claiming additional overseas representation expenditure, which was not verified by the consultant prior to lodgement so that a rule limiting a grant entitlement would not apply.</p> <p>The consultant did not ‘flag’ the over claiming and over claiming was discovered by the grant assessor.</p>
2012	Consultant 2	<p>Applicant B</p> <p>Applicant C</p> <p>Applicant D</p>	<p>A systematic course of conduct by the consultant in not making inquiries and or not sighting source documentation as to the eligibility of the applicant and the eligibility of expenses claimed.</p> <p><i>Falsely declared on application form “I have made relevant inquiries of and have sought access to relevant documents from the applicant with a view to satisfying myself as to the eligibility of the applicant and the expenditure claimed for the grant to which application relates.”</i></p>
2010	Consultant 3	Applicant E	<p>A document inferred a suggestion by the consultant that the applicant produce false documentation. In 2003, search warrants were executed on the consultant’s business and records taken. In 2007, Austrade was advised that criminal charges were potentially available against the principal of the applicant and the consultant.</p> <p>In 2008, although it appeared there was a prima facie case against the consultant, it was concluded that there were not good prospects of a conviction.</p>

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2010	Consultant 4	Applicant F	<p>A grant assessor identified irregularities with documentation which resulted in the consultant providing Austrade with a written document outlining events which contained an admission that he provided Austrade with false or misleading documents. Search warrants were executed on the consultant's business premises and a later brief of evidence was provided to the CDDP resulting in the consultant being criminally charged under section 134.2 of Criminal Code (Obtaining a Financial Advantage by Deception).</p> <p>At trial, the consultant admitted his actions were deceptive but argued they were not dishonest. He had falsified the records to enable smooth progress of the assessment.</p> <p>In 2010, at the Sydney District Court, a jury found the consultant not guilty.</p>
2009	Consultant 5	Applicant G	<p>The consultant was suspected of trading while insolvent. He had secured instructions from applicants directing Austrade to pay grants directly into his business account, as is common practice with EMDG consultants. Once paid, the grants may have been available to the administrators.</p> <p>Austrade asked the EMDG Code of Practice Administration Committee (COPAC) to remove the consultant from their list of EMDG consultants. COPAC, however, declined this request.</p>

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Question 2

Can you provide, on notice, to the extent that you can, any empirical data that indicates the validity of Austrade's proposition regarding the amount of fees received annually by consultants?

Answer

In 2009, Austrade conducted a significant number of discussions with EMDG consultants and applicants regarding consultant industry practice. Austrade observed that almost all consultants were charging by commission and, while commissions ranged from 8 to 15 per cent, by far the most common rate charged was 10 per cent. Austrade has assumed this as the average rate charged.

The empirical data used to estimate the total amount of EMDG consultants fees are:

- the total number of claims lodged by EMDG consultants assessed and paid in 2011–12 was 1,754
- the total value of these grants was \$77.9 million
- This implies a total level of commission to consultants of some \$7.8 million.

Question 3

Can you provide, on notice, data from the past four years, on how many successful grant applicants were prepared by consultants who are signatories to the Consultants Code of Conduct?

Answer

The table below shows the number of successful grant applications lodged over the past four grant years by consultants who have signed the Code of Conduct, and also shows comparative data for self-lodged and non-code of conduct consultant lodged grants.

	Consultant-Lodged				Self-Lodged		Totals	
	Code of Conduct Consultant		Non-Code of Conduct Consultant		No Consultant			
Grant Year	Grants	% of Year's Total	Grants	% of Year's Total	Grants	% of Year's Total	Total Grants	Total % of Year's Total
2008–09	1,857	39%	847	18%	2,033	43%	4,737	100%
2009–10	1,676	39%	805	19%	1,764	42%	4,245	100%
2010–11	1,214	41%	541	18%	1,226	41%	2,981	100%
2011–12*	1,031	41%	442	18%	1,051	42%	2,524	100%
Grand Total	5,778	40%	2,635	18%	6,074	42%	14,487	100%

** Note: Approximately 91 per cent of GY 2011–12 applications have been assessed @ COB 11/6/2013.*

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As previously advised, 23 per cent of consultants are signatories to the Code of Conduct. While 77 per cent of consultants may lodge only 18 per cent of claims, none of these are subject to the Consultants' Code of Conduct. In Austrade's view, the probity of a consultant lodging two claims is just as important as that of consultants lodging large numbers of claims in maintaining public confidence.

Senator Xenophon

Question 4

Please provide details of Austrade's internal modelling, inputs and conclusions regarding the effect of the proposed changes on EMDG applicants.

Answer

Austrade modelling of the effect of the proposed changes to eligible markets is based on the assumption that the claim profile (which markets were claimed and the amounts claimed) will be largely unchanged from one year to the next. The effect of legislative changes can therefore be estimated by estimating the effects that the changes would have on the current claim population. The estimates act as a guide only, as grant application numbers and values can change from year to year.

The legislative changes have two main effects on claim demand. These are:

- a) Claimants other than Approved Bodies cannot claim in "developed" markets (i.e. Canada, the USA and the European Union) after their fifth grant
- b) All claimants are eligible to claim for export market development expenditure for eight years in "emerging" markets (i.e. all countries not defined as "developed markets").

The EMDG application form asks applicants to specify the countries for which they are claiming EMDG expenses. There are spaces for six countries on the application form, so in cases where expenses have been claimed in more than six countries, claimants use the generic "other countries" option to show the value of expenditure claimed in countries outside their top five.

The modelling divided countries into two groups: developed and emerging. The "developed" group included the USA, Canada and all countries of the European Union. The "emerging" group comprised every country in the world not defined as a "developed" market. Expense claims from the "other countries" group were assigned to the "developed" or "emerging" groups in the ratio 60 per cent to developed markets; 40 per cent to emerging markets. This ratio has been used as it is the ratio of "developed" market to "emerging" market expenses observed across all expense claims, where the market has been identified.

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Estimate of Year Eight Claims

EMDG claims are currently limited to seven. As there are no year eight claimants, current year seven claims were added into the claim population as a proxy for year eight claims.

Grant Claim Estimation

The value of a grant application can be calculated as:

$$\text{Grant Claim} = (\text{Total expenditure} - \$10,000) \times 50 \text{ per cent}$$

Claims are capped at \$150,000, so any claim greater than this value is reduced to \$150,000.

Claims were adjusted to allow for the effect of the Export Performance Test, which required that specified minimum levels of export sales be achieved.

Grant Estimation

The average claim was reduced by 16 per cent. This represents the average grant reduction that occurs as a result of Austrade's auditing regime.

Each grant is then estimated as:

$$\text{Estimated Grant Value} = \text{Claim Value} \times 84 \text{ per cent.}$$

Effect of Legislation on Grant Estimates

Expense claims with the following characteristics were removed from the figures:

Years in scheme of claimant > 5 and Expenses claimed in a developed market
and Claimant is not an Approved Body

Removing the no-longer eligible claims and re-calculating all grants produces an estimate of grants payable under the new scheme rules.

Eligible Claimants under new legislation

Number of still eligible claimants under new legislation was estimated as 2,971.

Estimated Reduction in Grant Demand

	Value
Current Total Grant Demand * (GY 2011–12)	\$123.1m
New Total Grant Demand (under new legislation):	\$116.0m
Estimated reduction in Grant Demand due to new legislation	\$7.1m

*Assumes a claim adjustment rate of 16 per cent

Estimated Impact on EMDG Budget

Total Budget	\$125.4m
Admin Budget (6 per cent of total budget)	\$7.524m
Funds available for Grants	\$117.9m
Total Grant Demand	\$116.0m
Funds Surplus	+\$1.9m

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Assumptions:

- No carried-over funds
- 100 per cent clearance rate and same claim profile as 2011–12 grant year
- slippage (ineligible expenses claimed) = 16 per cent
- percentage of EMDG budget allocated for administration = 6 per cent.

Please note that in preparing this answer, Austrade noted an error in the methodology used in the estimates provided to the Committee on 30 May 2013. The text below replaces section 2 a) in that submission.

“Of the 2,971 applicants who would hypothetically be able to claim an EMDG grant under the proposed legislation:

- 107 applicants (3.6 per cent) would be year-8 applicants who are now able to claim an additional grant in East Asian, emerging and frontier markets
- 237 applicants (8.0 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, 169 applicants (5.6 per cent) have not claimed a sufficient value of expenditure in East Asian, emerging and frontier markets to qualify for a grant and would therefore be ineligible to claim any grants after year five. This includes applicants who only claim in developed markets.

The net result of these changes is that overall claim numbers are expected to decrease by about 74 (2.4 per cent) per annum.”

In Austrade’s view, this correction does not materially change the estimated impact of the legislation on the population of some 3,000 applicants.

Austrade’s experience is that changes in eligibility tend to influence future export marketing expenditure by the claimant population. It is likely, therefore, that marketing expenditure in East Asian, emerging and frontier markets will increase, leading to a lesser number of claimants negatively affected and increased claim amounts and therefore grants for those claiming in the East Asian, emerging and frontier markets.

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Question 5

Are there any joint venture applications currently being assessed?

Answer

During 2012–13, Austrade received nine applications for joint venture status. Of these, three were approved, three were denied and three remain subject to determination.