



Australian Trade Commission Legislation Amendment Bill 2006

Jeffrey Robertson
Foreign Affairs, Defence and Trade Section

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Australian Trade Commission Legislation Amendment Bill 2006

Date introduced: 30 March 2006

House: House of Representatives

Portfolio: Trade

Commencement: Sections 1 to 3 commence on Royal Assent. The main provisions - those changing Austrade's governance structure - commence on Proclamation, or failing that six months after Royal Assent. Commencement of the provisions relating to the export market development grants scheme depend on when the Export Market Development Grants Legislation Amendment Bill 2006 comes into force.

Purpose

The purpose of the Bill is to amend the *Australian Trade Commission Act 1985* in order to implement changes to the governance structure of the Australian Trade Commission (Austrade).

Background

Austrade is the Australian Government statutory authority responsible for helping Australian businesses to succeed in export and international business. It does this through the provision of advice, market intelligence and ongoing support to Australian businesses preparing, commencing, and undertaking export activity.

Austrade maintains 17 offices and 52 TradeStart offices across Australia and a network across the globe that includes 130 offices in over 60 countries. At the basic level it provides mentoring, informational seminars and training in export activity. At a more advanced level it identifies export opportunities and potential partnership opportunities, and provides in-country support such as advocacy and research. Austrade also administers the Export Market Development Grants (EMDG) scheme, which provides partial reimbursement of approved marketing expenses in export activity.

Austrade also contributes to the wider Australian community through the development of an export culture. It hosts the annual Australian Export Awards and plays an active role in developing community understanding of the benefits of exporting through publications, seminars and community displays.

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In recent years, Austrade has been instrumental in promoting the Government initiative to double the number of exporters by 2006 and in promoting trade opportunities arising from Free Trade Agreements concluded with Singapore, Thailand, and the United States.

Austrade has also had some involvement in the Iraqi 'Oil for Food' issue in respect of its assistance to the Australian Wheat Board's exports to Iraq.

As a statutory authority under the *Commonwealth Authorities and Companies Act 1997*, Austrade is governed by a board, whose members are drawn from business and government, and reports directly to the Minister for Trade.

The current Bill will transition Austrade from a statutory authority under the *Commonwealth Authorities and Companies Act 1997*, to a statutory agency subject to the *Public Service Act 1999* and the *Financial Management and Accountability Act 1997*, as part of the Government's response to the [Review of Corporate Governance of Statutory Authorities and Office Holders](#), also known as the Uhrig Review.

The Uhrig Review recommended that two templates be applied to ensure good governance of statutory authorities: agencies should either be managed by a Chief Executive Officer (CEO) or by a board structure. Both templates detail measures for ensuring the boundaries of responsibilities are better understood and the relationship between Australian government authorities, Ministers and portfolio departments are made clear.¹

Uhrig recommended that the selection of the management template and financial frameworks to be applied should be based on the governance characteristics of a statutory authority:²

- The *Financial Management and Accountability Act 1997* should be applied to statutory authorities where it is appropriate they be legally and financially part of the Commonwealth and do not need to own assets. This includes Budget-funded authorities. Uhrig recommended that these organisations should be governed by a CEO.
- The *Commonwealth Authorities and Companies Act 1997* should be applied to statutory authorities where it is appropriate that they be legally and financially separate from the Commonwealth. Uhrig recommended that these organisations should be governed by a board.

In general, agencies which exclusively manage Commonwealth appropriations should be represented and governed by a CEO. A board structure is favoured if there is a strong commercial focus to the organisation, or if the agency is intergovernmental.

The *Financial Management and Accountability Act 1997* applies to budget-funded authorities managed by a Chief Executive Officer (CEO). The *Financial Management and Accountability Act 1997* establishes various management and reporting responsibilities for the CEO (sections 44–46, 49 and 51), as well as allowing the Minister to give guidelines

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to the CEO (s. 64).³ Furthermore, the *Financial Management and Accountability Act 1997* provides an accountability framework for CEOs to manage agency resources.

As part of its response to the Uhrig Report, the Government advised that:

Ministers will assess the statutory authorities and similar bodies within their portfolios against the governance templates [ie the regulatory regimes outlined above]. Selection of the appropriate template, whether 'executive management' or 'board' will be based, as recommended in the report, on the degree to which each body has been delegated full power to act.⁴

Austrade is currently governed by a Board and is subject to the *Commonwealth Authorities and Companies Act 1997*. Under the amendments proposed in the Bill, the Austrade Board will be replaced by a CEO appointed by the Minister and the governing Act will change from the *Commonwealth Authorities and Companies Act 1997* to the *Financial Management and Accountability Act 1997*. Staff will be employed under the *Public Service Act 1999*. According to the Minister for Trade, this change comes about because:

The government has assessed Austrade's existing governance structure against the recommendations and principles of the Uhrig review and identified that the executive management template is more suitable to Austrade's role as the government's trade facilitation agency.⁵

Arguments in favour of retaining the current structure focus on the credibility and market awareness that the maintenance of a board entails. The Austrade board was established in 1985 in part, due to the fact that the majority of Austrade's stakeholders were in the private sector—exporters and those seeking to export. This remains the case and the maintenance of a board would ensure that stakeholders continue to have input at the highest levels, regardless of the preference of the Trade Minister or any future Trade Minister, for consultative mechanisms. As noted by Bob McMullan MP:

...the Board of Austrade has often added a commercial awareness, a market focus and a business credibility to Austrade's very important activities to assist and encourage Australian firms to export, or to export more successfully.⁶

However, in a submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee Inquiry into the Bill, Warren Truss MP notes:

A range of non legislated mechanisms for consultation with industry continue to operate. These include the Free Trade Agreement Export Advisory Panel and Trade Promotion Advisory Committee. The amendments proposed...do not impact these consultation mechanisms, or the capacity to modify or establish additional or revised processes as required.⁷

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Main provisions

Schedule 1 amends the *Australian Trade Commission Act 1985*.

Item 2 of Schedule 1 repeals definitions no longer required under arrangements enacted by the Bill, including definitions of the Board and Board members. It also creates a new definition of CEO.

Item 3 of Schedule 1 repeals provisions that relate to activities or powers that were conferred on Austrade as a body corporate under the *Commonwealth Authorities and Companies Act 1997*.

Item 5 of Schedule 1 removes ambiguity in other Acts to employees of Austrade.

Item 8 of Schedule 1 provides for the establishment and functions of the statutory office of CEO.

Item 17 of Schedule 1 confers the functions and powers of the CEO under the Act, including the provision that the Minister retains the power to issue direction in writing with respect to the performance of the CEO's functions and exercise of power.

Item 26 of Schedule 1 sets the terms surrounding the appointment of the CEO.

Schedule 2 relates to consequential amendments of the *Export Market Development Grants Act 1997*.

Items 127 to 177 of Schedule 2 relate to amendments contingent upon the coming in to force of the Export Market Development Grants Act Legislation Amendment Act 2006.

Schedule 3 covers other consequential amendments.

Item 6 of Schedule 3 removes redundant references to employees of Austrade in the *Public Service Act 1999*.

Concluding comments

The Bill fulfils the objective of implementing the Government response to the Uhrig Review. The amendments are operational and enabling in nature, and arguably will not affect Austrade's functions and the delivery of export promotion and facilitation services in the short-term. However, they could potentially impact Austrade's functions and services in the long-term if appropriate mechanisms are not put in place to obtain similar high-level input from business and industry leaders that current and past board members have provided.

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Endnotes

1. N. Minchin (Finance Minister), 'Australian Government Response to Uhrig Report', *media release 57/04*, 12 August 2004:
<http://www.finance.gov.au/scripts/Media.asp?Table=MFA&Id=550>
2. *ibid.*, p. 12, point 6.
3. R. Grant, *loc. cit.*
4. Australian Government response to the recommendations of the review of the corporate governance of statutory authorities and office holders.
5. Mark Vaile, Minister for Trade, 'Second reading speech: Australian Trade Commission Legislation Amendment Bill 2006', House of Representatives, Debates, 30 March 2006, p. 1.
6. Bob McMullan, "Why Austrade needs a board", Labor e-Herald, 24 January 2006, accessed 30 April 2006 at: <http://eherald.alp.org.au/articles/0106/magopine24-01.php>
7. Warren Truss MP, Submission to the Foreign Affairs, Defence and Trade Legislation Committee Inquiry into the Austrade Legislation Amendment Bill 2006.

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