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Export Market Development Grants Amendment Bill 2010

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Export Market Development Grants Amendment Bill 2010

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House: House of Representatives

Portfolio: Trade

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Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, which is at http://www.aph.gov.au/bills/. When Bills have been passed they can be found at ComLaw, which is at http://www.comlaw.gov.au/.

Purpose

The Bill extends the Export Market Development Grants (EMDG) scheme by five years from 2011–12 to 2015–16 and makes amendments to the *Export Market Development Grants Act 1997* (the Act) to generally reduce access to grants and grant money under the Act in line with a reduction in funding announced in the 2010–11 Budget.

Background

The EMDG scheme was first established in 1974 by the *Export Market Development Grants Act 1974*. The scheme was substantially simplified in 1997 by the *Export Market Development Grants Act 1997* which repealed the previous legislation and capped total annual grants paid under the scheme at approximately $150 million per year.[1] Partly in fulfilment of an election commitment to improve Australia's trade performance and partly in anticipation of a review of the EMDG scheme, the Rudd Government increased funding in 2008–09 and 2009–10 to $200 million per year.[2] Consequent amendments to the scheme by the *Export Market Development Grants Amendment Act 2008* widened the eligibility criteria as well as increasing the number and quantum of grant payments.[3]

1. L Jones, *Export Market Development Grants Bill 1997*, Bills digest, no. 118, 1996–97, Parliamentary Library, Canberra, 1997, viewed 27 May 2010, http://www.aph.gov.au/library/pubs/bd/1996-97/97bd118.htm

2. S Crean (Minister for Trade), 'Delivering on commitment to revitalise EMDG scheme', media release, 25 March 2008, viewed 31 May 2010, http://www.trademinister.gov.au/releases/2008/sc_022.html

3. P Tan, *Export Market Development Grants Amendment Bill 2008*, Bills digest, no. 101, 2007–2008, Parliamentary Library, Canberra, 2008, viewed 27 May 2010, http://www.aph.gov.au/library/pubs/bd/2007-08/08bd101.pdf

In his second reading speech introducing the Bill, the Minister referred to the timing of the extra funding and the focus of assistance:

> In the government's first term we have modernised the scheme through legislation in 2008 and we have increased its funding in 2008-09 by $50 million and again in 2009-10 by $50 million. This increased funding of $100 million over two years was made at exactly the right time to support our important SME [small and medium enterprise] exporters during the global financial crisis.
>
> The modernisation of the scheme and increased funding has received a very positive response from business; over the last two years the number of applications has increased 21 per cent.
>
> As international markets continue to improve and as the government brings the budget back into surplus it is now appropriate to review the provisions of the scheme to focus its assistance on those SME exporters who can benefit most.[4]

Financial implications

The Explanatory Memorandum for the Bill states that expenditure under the Act 'is set through annual Appropriation Acts. A capping mechanism ensures that expenditure under the scheme is limited to the amount appropriated'.[5]

According to the 2010–11 budget papers, the amount appropriated for 2010–11 is $150.4 million:

Table 1: Trade development schemes – Export Market Development Grants (EMDG)

	2009-10 Revised budget $'000	2010-11 Budget $'000	2011-12 Forward year 1 $'000	2012-13 Forward year 2 $'000	2013-14 Forward year 3 $'000
Annual administered expenses:					
Administered item	200,400	150,400	150,400	155,400	154,000
Total program expenses	**200,400**	**150,400**	**150,400**	**150,400**	**150,400**

Source: Portfolio budget statements 2010–11: budget related paper no.1.10: Foreign Affairs and Trade Portfolio, p. 78

4. S Smith (Minister for Foreign Affairs), 'Second reading speech: Export Market Development Grants Amendment Bill 2010', House of Representatives, *Debates*, 26 May 2010, p. 7, viewed 27 May 2010, http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2010-05-26/0027/hansard_frag.pdf;fileType=application%2Fpdf

5. Explanatory Memorandum, Export Market Development Grants Amendment Bill 2010, p. 2.

Key issues

Proposed changes to the EMDG scheme

The proposed changes outlined in the Bill include:

- an extension of the EMDG scheme so that it applies to all grant years from 2011–12 to 2015–16 inclusive. A further extension beyond 2015–16 will be subject to a review which must be carried out and provided to the Minister not later than 30 June 2015
- a reduction in the maximum grant payable per grant year from $200 000 to $150 000
- a reduction in the maximum number of grants available for an individual recipient (other than an approved body or joint venture) from eight to seven
- an increase in the minimum eligible expenses threshold from $10 000 to $20 000
- a cap on intellectual property (IP) registration expenses at $50 000 per application
- an increase in the income limit for members of approved joint ventures/consortia from $30 million to $50 million. (This change will rectify a previous drafting error and aligns the income limit applying to joint venture members with the income limit applying to general EMDG applicants.)
- the removal of approved trading houses as an eligible special approval applicant category, as recommended by the Mortimer review. The current provision allows the Australian Trade Commission (Austrade) to grant special approval to large organisations that would normally be ineligible to access the scheme when representing smaller, rival competitors. This provision has been unused for a number of years
- the reinstatement of disqualifying conviction provisions in the Act that were unintentionally removed when the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* replaced earlier disqualifying conviction provisions
- enabling the Chief Executive Officer (CEO) of Austrade to impose conditions on the accreditation of EMDG consultants, and
- amending the 'form and manner' requirements and lodgement deadlines for grant applications submitted by accredited EMDG consultants.

It should be noted that the establishment of a statutory accreditation scheme for EMDG consultants, as already provided for by section 100 of the Act, will only have practical application should Austrade decide to implement such a scheme in the future. At this stage, Austrade has not made a decision to proceed with a consultant accreditation scheme but the proposed changes enabling Austrade to specify, among other things, accreditation conditions and lodgement deadlines form part of the accreditation framework.

Mortimer review

There have been 15 reviews of the EMDG scheme since it started in 1974.[6] The most recent review was conducted in 2008 by Mr David Mortimer AO, Chairman of Leighton Holdings Ltd and Australia Post. The immediate issues faced by the Mortimer review were a shortfall in capped funding in 2007–08 (approximately $28 million and a greater shortfall in the subsequent year), stakeholder uncertainty due to changes introduced in 2008, and an unexpected fall in export marketing expenditure.[7] The shortfall in funding, which effectively reduced the maximum grant from $150 000 to $80 000, was met by $50 million in extra funding provided by the Government in 2008–09 and 2009–10.

The Mortimer review was concerned that current demand for the EMDG scheme exceeded available funding. Grant recipients were guaranteed up to a designated initial payment, but the balance or remaining amount which was paid at the end of the financial year depended on residual funding. This meant that a large number of recipients received a substantially reduced EMDG entitlement. While continuing to support a capped funding scheme, the Mortimer review identified two options to better align the cost of the scheme to its budget:

- allocate significant additional funding to meet current and future demand estimates of demand, and
- set ongoing expenditure at the 2009–10 budgeted level ($200 million) through significant changes to grant provisions.

The review favoured the latter option but stopped short of recommending either option. Instead it recommended that the funding cap should be indexed annually to preserve the real value of the funding and a tightening of provisions to reduce access to the scheme. Among the changes recommended by the review were a reduction in the number of grants a business is eligible to receive from eight to five and an increase in the minimum eligible expenses threshold to $30 000.

Successive reviews of the EMDG scheme have pointed to the grant multiplier effect of the scheme and its positive trade impact.[8] Similarly, the economic modelling commissioned by the Mortimer review, as part of a broader review of export policies and programs, found that the scheme generated additional exports and compared favourably with other

6. For a summary of the reviews and major changes to the scheme since 1974, see *Winning in worlds markets*, (report prepared for the Minister for Trade by Mr David Mortimer AO), Commonwealth of Australia, 2008, pp. 38–48, viewed 27 May 2010, http://www.dfat.gov.au/publications/mortimer_report/mortimer_report2.pdf

7. Australian Institute of Export (AIE), *EMDG underfunding situation*, viewed 28 May 2010, http://www.aph.gov.au/house/committee/jfadt/apla/subs/sub%2032.pdf

8. Australian Trade Commission (Austrade), *Review of the export market development grants scheme*, Canberra, 2000, pp. 220–242; Centre for International Economics (CIE), *Economic analysis of the export market development grants scheme*, Canberra, 2005, pp. 63–79.

government programs and benchmarks.[9] However, the Productivity Commission made cautionary observations regarding the survey responses used in the modelling.[10]

Main provisions

Schedule 1—Amendments to the *Export Market Development Grants Act 1997*

Part 1—Main amendments

Items 1 and 2 remove the approved trading house applicant category from the Act.

Item 3 provides for applicants (other than approved bodies and approved joint ventures) to receive up to seven grants under the EMDG scheme (previously the maximum was eight).

Items 4–9 make consequential amendments to the Act in respect of the removal of the approved trading house applicant category and the reduction in the maximum number of grants available to individual recipients.

Item 10 increases the ***eligible expenses*** threshold incurred for a grant from $10 000 to $20 000 within the grant year (if the applicant is not a grantee in respect of any previous grant year, then ***eligible expenses*** includes those incurred during the grant year or the immediately preceding year).

Item 11 limits the expenses claimable under item 8 of the table in section 33 of the Act to $50 000 per grant year. Item 8 in the table was added to the list of eligible promotional activities by the *Export Market Development Grants Amendment Act 2008* and relates to expenses incurred in granting, registering or extending eligible IP rights under foreign laws.

Item 17 increases the income limit for EMDG eligibility of joint venture members from $30 million to $50 million in the grant year. The income limit rules in subsections 7(1)(d) and 7(4)(c) of the Act, which apply to individual applicants and trustees respectively, was increased from $30 million to $50 million by the *Export Market Development Grants Amendment Act 2008*. The income limit rule applying to joint venture members remained unchanged. This item aligns the income limit rule applying to joint venture members with the income limit rule applying to individuals and trustees.

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9. Lateral Economics, *Review of the export market development grants scheme 2008*, Canberra, 2008.

10. Productivity Commission, *Trade and assistance review 2007-08*, Canberra, 2009, pp. 29–30.

Item 22 reduces the maximum grant payable per grant year from $200 000 to $150 000. The current $250 000 ceiling for the combined grants payable for members of related companies groups is unchanged.

Item 32 amends section 106A to require an independent review of the EMDG scheme to be carried out and provided to the Minister no later than 30 June 2015. The last section 106A review was the 2008 Mortimer review mentioned earlier in this Digest.

Item 34 amends the definition of *grant year* in section 107 of the Act so that all grant years from 1996–97 until 2015–16 inclusive are years for which grants can be paid.

Part 2—Other amendments

Item 36 reinstates the disqualifying conviction provisions in the Act that were unintentionally removed when the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* replaced earlier disqualifying conviction provisions.

Item 37 amends the 'form and manner' requirements at paragraph 70(2)(b) of the Act to permit an extension of time for submitting grant applications in the circumstances specified in a legislative instrument to be made by the CEO of Austrade.

Item 38 inserts **new section 70(4)** into the Act to permit the CEO of Austrade to specify, by legislative instrument, the circumstances and timeframe for submitting applications. The instrument would be subject to parliamentary scrutiny and disallowance under the *Legislative Instruments Act 2003*.

Item 39 provides that the same disqualifying conviction provisions referred to at item 36 also apply to EMDG consultants preparing applications on behalf of their clients.

Item 40 inserts **new paragraph 97(1)(k)** to provide that any decision of the CEO of Austrade under an EMDG consultant accreditation scheme to impose conditions on the accreditation of a consultant or to vary those conditions is a 'reviewable decision'.[11]

Item 41 inserts **new paragraph 100(2)(aa)** to permit the CEO of Austrade to make decisions imposing conditions on the accreditation of EMDG consultants or varying or removing those conditions.

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11. Section 98 of the Act provides that a person affected by a 'reviewable decision' may request the CEO of Austrade to reconsider it. After receiving written notice of the request (including the reasons for making the request) within the stipulated timeframe, the CEO must reconsider the decision and may confirm or vary the decision in such manner as the CEO thinks fit. The decision can itself be subject to review by the Administrative Appeals Tribunal under section 99 of the Act.

Items 42 makes consequential amendments to the Act as a result of the reinstatement of disqualifying conviction provisions referred to at item 36.

Item 43 provides that the updated disqualifying conviction provisions described at items 36 and 39 apply to grant applications made in respect of grant years commencing on or after 1 July 2010. The updated item 42 conviction provisions will only apply in relation to grants or advances paid by Austrade on or after the day after Royal Assent.