



Tradex Scheme Amendment Bill 2010

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Tradex Scheme Amendment Bill 2010

Date introduced: 29 September 2010

House: House of Representatives

Portfolio: Innovation, Industry, Science and Research

Commencement: Sections 1–3 on the day of Royal Assent; Schedule 1 on a day to be fixed by Proclamation but no later than six months after Royal Assent

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Tradex Scheme Amendment Bill 2010 (the Bill) is to amend the *Tradex Scheme Act 1999* (the Tradex Act) to clarify the eligibility of partnerships and remove redundant provisions.

History of the Bill

An earlier version of the Tradex Scheme Amendment Bill 2010 was introduced into the House of Representatives during the term of the 42nd Parliament. However, that version of the Bill lapsed on 19 July 2010 when the Parliament was prorogued. This version of the Bill replicates the earlier version exactly.

Background

The Tradex Scheme

The Tradex Scheme (Tradex) is an Australian Government scheme which commenced on 24 June 2000.¹ It provides up-front exemptions from customs duty, and goods and services tax (GST), on

1. The Tradex Scheme arose from the former Coalition Government policy statement: Investing for Growth. J Howard (former Prime Minister), 'Investing for Growth', *Address at National Press Club and Questions and Answers*, Canberra, 8 December 1997, viewed 8 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FMAO30%22>

imported goods that are intended for direct export, or on imported goods that are used, lost or wasted in the manufacture of other goods that are exported later on.²

Before Tradex was introduced, importers had to claim a refund after exporting their goods. However, under Tradex, duty and GST are exempted up-front. For example, if goods normally attract five per cent customs duty and ten per cent GST, a Tradex order means an up-front saving of 15 per cent on the value of the imported goods when they first arrive in Australia. Thus, importers are the focus of the benefit under Tradex as it can provide a significant cash flow benefit.

Rationale for the Bill

The Minister's second reading speech gives the rationale for the Bill as follows:

Currently the *Tradex Scheme Act 1999* ... requires an applicant for the Tradex Scheme to be a 'legal' person who proposes to import goods. The Acts Interpretation Act 1901 provides that a person generally includes a body politic or corporate as well as an individual. While a partnership is a relationship recognised by the law, it is an unincorporated body. Coverage of partnerships under the Tradex Scheme is therefore unclear.

While partnerships were not explicitly referenced in the legislation, they were not, and are not, intended to be excluded from the Tradex Scheme. This bill seeks to clarify this position in law.³

The nature of partnership

Partnership is the relation that subsists between persons carrying on a business in common with a view of profit.⁴ There are four characteristics that distinguish partnerships from a public trading corporation:

- identification of the individual partners with the firm
- unlimited personal liability of the partners
- non-transferability of a partner's interest, and
- the right of each partner to participate in management.⁵

2. AusIndustry website, *Tradex Fact Sheet*, viewed 1 October 2010,

<http://www.ausindustry.gov.au/importandexport/tradexscheme/pages/tradexscheme-factsheet.aspx>

3. C Emerson (Minister for Small Business, Independent Contractors and the Service Economy, Minister Assisting the Finance Minister on Deregulation and Minister for Competition Policy and Consumer Affairs), 'Second reading speech: Tradex Scheme Amendment Bill 2010', House of Representatives, *Debates*, 16 June 2010, p. 5474.

4. K Fletcher, *The Law of Partnership in Australia and New Zealand*, sixth edition, Law Book Company Limited, Sydney, 1991, p. 27.

5. *Ibid.*, p. 15.

Committee consideration

The Selection of Bills Committee resolved to recommend that the Bill not be referred to any Senate Committee for inquiry and report.⁶

Financial implications

The proposed amendments are expected to have no significant impact on revenue, given that they do no more than clarify the law as it already exists.⁷

Key provisions

Items 1 and 2 of the Bill amend the definitions section of the Tradex Act. **Item 2** inserts a definition of **'person'** which includes a partnership. **Item 1** repeals and substitutes the definition of **'ineligible'** to include circumstances when a person in a partnership is ineligible to apply for, or to hold, a tradex order.

Existing section 6 provides for the existence of **'disqualifying circumstances'** in relation to a person who is the holder of a tradex order. **Item 3** repeals and substitutes paragraph 6(b) to set out when **'disqualifying circumstances'** exist for a person in a partnership.

Item 4 inserts **proposed section 6A** which provides that a change in the composition of a partnership does not affect the continuity of the partnership. According to the Explanatory Memorandum, this amendment:

... would ensure that changes in the composition of a partnership would not affect the continuity of the partnership for the purposes of the Tradex Scheme. This would simplify the regulatory burden on partnership members by not requiring them to reapply every time there is a change in the make up of the partnership.⁸

Existing section 11 sets out the conditions to be satisfied in order for the Secretary to make a Tradex order in respect of certain goods. **Item 5** repeals and replaces paragraph 11(1)(c) with a provision applying to applicants who are individuals, body corporate or partnerships.

6. Selection of Bills Committee, *Report No. 9 of 2010*, 23 June 2010, viewed 7 July 2010, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2010/report0910.pdf

7. Explanatory Memorandum, Tradex Scheme Amendment Bill 2010, p. 1.

8. *Ibid.*, item 4. This is a common inclusion in the drafting of Commonwealth statutes, for example: s.23 *Anti-money Laundering and Counter-Terrorism Financing Act 2006*, s.6 *Do Not Call Register Act 2006*, s.10 *Spam Act 2003* and s.151AD *Trade Practices Act 1974*.

Item 7 inserts **proposed section 48A** which sets out the treatment of partnerships by reiterating that the intention is for the Tradex Act to apply to a partnership as if it were a person subject to the following:

- an obligation that would otherwise be imposed on the partnership is imposed on each partner, but may be discharged by any of the partners.
- a notice or other document is given to one of the partners of the partnership is taken to have been given to all of the partners of the partnership
- the partners are jointly and severally liable to pay an amount that would otherwise be payable by the partnership,⁹ and
- an offence under the Tradex Act that would otherwise be committed by the partnership is taken to have been committed by each partner.

However, **proposed subsection 48A(6)** provides that an individual partner does not commit an offence where he or she does not know of the circumstances that constitute the contravention of the relevant provision; or knows of those circumstances, but takes all reasonable steps to correct the contravention as soon as possible after becoming aware of those circumstances.

Item 9 of the Bill repeals Part 12 of the Tradex Act which contained transitional provisions in respect of the predecessor to the Tradex Scheme—the Texco Scheme.¹⁰

Whilst the repeal of Part 12 will remove the references to the Texco Scheme in section 50 of the Tradex Act, it is noted that there is no consequential repeal of the definition of ***‘Texco Scheme’*** from section 4 of the Tradex Act.

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9. The term ***‘jointly and severally’*** when used in connection with the liability of two or more persons, means that each person is liable together or separately. The liability may be enforced against all, or any, or only one of the persons bound by joint and several liability.
10. The ***‘Texco Scheme’*** means the administrative scheme of that name that was in force immediately before the commencement of the Tradex Act under Customs By-law 9640056 for the purposes of item 21 of Schedule 4 to the *Customs Tariff Act 1995*.

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