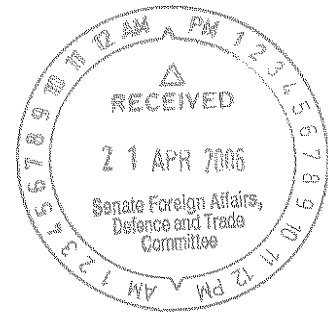




HON WARREN TRUSS MP
Minister for Transport and Regional Services
Acting Trade Minister
Acting Leader of The Nationals



21 APR 2006

Senator the Hon David Johnston
Chairman
Senate Foreign Affairs, Defence and Trade Legislation Committee
Parliament House
CANBERRA ACT 2600

Attention: Dr Kathleen Dermody

Dear Senator

**Inquiry into the Provisions of the Export Market Development Grants Legislation
Amendment Bill 2006**

I refer to your letter of 1 April 2006 to the Hon Mark Vaile MP, Deputy Prime Minister and Minister for Trade, concerning the inquiry of the Senate Foreign Affairs, Defence and Trade Legislation Committee into the provisions of the above bill.

I am pleased to provide the attached submission prepared by Austrade. Austrade will also send the submission electronically to Dr Kathleen Dermody, Secretary of the Committee.

This submission constitutes the response to both your letter to Minister Vaile and to a concurrent letter from Dr Dermody to Mr Peter O'Byrne, the Managing Director of Austrade.

Any queries regarding this submission should be referred to Ms Margaret Ward, General Manager Export Finance Assistance Programs, Austrade on (02) 9390 2763.

Yours sincerely

WARREN TRUSS



Australian Government

Australian Trade Commission

Submission to

**Senate Foreign Affairs, Defence and Trade
Legislation Committee**

**Inquiry into the Provisions of the
Export Market Development Grants Legislation
Amendment Bill 2006**

April 2006

CONTENTS

- 1. Introduction**
- 2. Background: the 2005 review of the Export Market Development Grants scheme**
- 3. General comments on the Export Market Development Grants Legislation Amendment Bill 2006**
- 4. Comments on specific amendments**
- 5. Concluding comments**

1. Introduction

Austrade is responsible for the delivery of assistance to Australian business efforts to export and develop international business. Austrade plays a key role in promoting opportunities to business arising from the Government's trade negotiations, including Australia's Free Trade Agreements.

Austrade is also responsible for administering the *Export Market Development Grants Act 1997* (EMDG Act) which provides for the grant of financial assistance by Austrade to small and medium enterprises to provide incentives for them to develop export markets. The EMDG Act sets out the rules under which Austrade administers the scheme, including criteria for eligibility of applicants for EMDG grant assistance, eligibility of the products they export or seek to export and eligibility of the expenses they incur in promoting their products for export.

EMDG grants provide partial reimbursement for expenditure made on eligible export promotion activities, with a maximum of seven taxable grants of up to \$150,000 each per year to be paid to any individual grant recipient.

In 2004-05, Austrade paid a total of \$123.9 million and 3,277 grants to small and medium Australian businesses under the EMDG scheme.

2. Background: the 2005 review of the Export Market Development Grants scheme

In accordance with section 106A of the EMDG Act, in 2004 the Minister for Trade asked Austrade to conduct a review of the EMDG scheme and provide him with a written report making recommendations about the continuation of the scheme by 30 June 2005.

The terms of reference for the review are set out at page 16 of Austrade's *Review of the Export Market Development Grants scheme 2005*, copies of which have been provided to the committee.

Austrade conducted a comprehensive review of the scheme, considering 394 public submissions, feedback from 70 consultation meetings and the results of independent research conducted by the Centre for International Economics.

As a result of this review, Austrade found that the EMDG scheme is an effective tool for encouraging businesses to seek out and develop export markets and that it enjoys very strong support from Australian businesses across a wide range of industries. In its review report to the Minister for Trade, Austrade recommended that the EMDG scheme be continued and made a number of other findings.

After considering Austrade's review's findings and taking into account post-review ministerial representations, the Government decided to extend the EMDG scheme for a further five years and introduce some changes to enhance the effectiveness of the scheme. The purpose of the Export Market Development Grants Legislation Amendment Bill 2006 is to implement these Government decisions.

3. General comments on the Export Market Development Grants Legislation Amendment Bill 2006

As discussed in the report of Austrade's review of the scheme, in Austrade's experience the basic model of the EMDG scheme works well. The reimbursement approach means that accountability is maintained and only firms that are serious about exporting access the scheme. This is because firms are required to make a financial commitment to export promotion before they are eligible for EMDG scheme grants. The scheme rules are also designed to assess eligibility in a uniform way and treat each applicant equally and fairly.

However, Austrade noted that some scheme rules had not kept up with changing business practices—particularly in the area of intellectual property exports. As well, Austrade believed there is a need to maintain a strong focus on risk management to deter over-claiming, both inadvertent and deliberate.

Austrade notes that the measures set out in the Export Market Development Grants Legislation Amendment Bill 2006 are intended to bring the scheme up to date with the needs of small and emerging exporters, improve scheme administration and enhance risk management.

4. Comments on specific amendments

Austrade offers the following comments on the amendments included in the bill.

- 1. Continue the Export Market Development Grants (EMDG) scheme to the end of the 2010-11 grant year and provide for a review of the scheme, with a report to be provided to the Minister for Trade by 30 June 2010.*

Under the current EMDG Act, the 2005-06 grant year is the final grant year¹. This amendment would continue the scheme for another five years until the 2010-11 grant year and provide for an independent review of the scheme to be initiated not later than 1 January 2010 and to report by 30 June 2010 making recommendations about the further continuation of the scheme.

Austrade's review of the scheme supported its continuation. The review found that the scheme is effective in increasing the number of SMEs that develop into new exporters, in increasing the number of SMEs that achieve sustainability in export markets, in generating additional exports and in further developing an export culture in Australia.

In arriving at this conclusion, Austrade took into account:

- strong business and industry views, expressed in public submissions and through the review facilitation process
- the independent survey of recent EMDG scheme recipients and analysis of the results
- Austrade's own experience as the administrator of the scheme.

¹ Note: the grant year is the year the applicant spends on export promotion activities which are eligible under the EMDG scheme. Generally, expenditure is claimable for partial reimbursement through the EMDG scheme in the financial year following the grant year.

2. *Increase the overseas visit allowance from \$200 to \$300 per day.*

This amendment would increase the claimable overseas visit allowance from the current rate of \$200 per day to \$300 per day.

As noted in the review report, Austrade's experience suggests that many high performing exporters regularly visit their overseas markets. These visits help exporters to better understand their customers, learn how business is conducted and develop new networks

At \$200 per day, the overseas visit allowance has not kept up with the costs of overseas visits and the amendment to increase the claimable allowance to \$300 per day would increase the incentive and assistance for visiting overseas markets.

3. *Provide that Austrade can deem eligible certain applicants that do not technically meet the Act's current 'principal status' requirements.*

Under current scheme rules, applicants must generally own the products being promoted for export and be the seller or intended seller of these products to foreign residents to be eligible for EMDG.

This amendment is intended to provide flexibility in handling emerging export sector applications that do not technically meet this requirement. The proposed change would allow, for example, an intellectual property (IP) exporter that uses a business structure that involves one company owning the IP and another promoting it, to receive an EMDG grant.

4. *Modify the scheme's Australian origin rules so that:*

- *goods coming into their final form in Australia must be 'made in Australia' to be eligible, and that*
- *for other goods to be eligible, Austrade must be satisfied that Australia will derive a significant net benefit from the sale of those goods outside Australia.*

This amendment would modify the scheme's current Australian origin rules which Austrade's operational experience suggests have become difficult to apply in the context of emerging business practices such as offshore manufacture. Two ministerial guidelines ('made in Australia' and 'significant net benefit') will be introduced to make it easier for applicants to clarify whether their goods are likely to be eligible for EMDG and will increase the transparency and accountability of Austrade's decision-making in regard to the eligibility of goods.

5. *Make eligible applicants' expenses incurred to increase the return on the disposal of intellectual property and know-how to a related company*

Under section 55 of the current EMDG Act, applicants cannot receive a scheme grant for their export promotion activities if they are exporting intellectual property or know-how through a subsidiary.

As part of their export marketing strategy, many Australian firms need to have a legal 'footprint' in some of their overseas target markets. For example, many Australian ICT firms attempting to enter United States markets set up a United States subsidiary to gain a credible market presence and/or for legal liability reasons.

This amendment would enable applicants to claim reasonable expenses related to promoting their intellectual property or know-how through related overseas companies.

6. *Separate the overseas representatives and marketing consultants claimable expense categories, cap overseas representatives expense claims at \$200,000 per claim and cap marketing consultants expense claims at \$50,000 per claim.*

Under the current EMDG Act, applicants are entitled to claim up to \$250,000 per claim for the combined expenses of two eligible expense categories, namely overseas representation and consultants expenses.

This amendment provides for the two expense categories to be separately capped, with overseas representation to be capped at \$200,000 per claim and marketing consultants to be capped at \$50,000 per claim.

Austrade's experience indicates that both the categories of overseas representatives and marketing consultants are valuable and relevant parts of the EMDG scheme. However, both categories are at risk in terms of the potential for over-claiming. Overseas representatives are based overseas and their activities are less open to scrutiny, while firms sometimes claim expenses for marketing consultants who are de facto employees, contrary to the intent of the EMDG Act. As most applicants claim much less than \$250,000 for overseas representatives and less than \$50,000 for marketing consultants, the majority of applicants would not be disadvantaged by the separation of these categories and the intended imposition of separate cap amounts.

7. *Revise the rule covering changes in business ownership to make it clearer for applicants and easier to administer.*

Currently, a business cannot receive more than seven grants. Section 94 of the EMDG Act provides a mechanism to enforce this rule even if new owners acquire the business.

This amendment to section 94 would set out the existing scheme rule covering changes in business ownership more clearly. The amended provision would apply when Austrade determines that a person is carrying on a business that is similar to one previously carried on by another person to such an extent that the new business should be treated as a continuation of the old business.

8. *Allow Austrade to grant special approval status, including approved body status, for five rather than three years.*

Under the current EMDG Act, Austrade may grant approval to apply for grants to some special categories of applicant, namely approved bodies, approved joint ventures and approved trading houses. Currently these approvals may be granted for periods of three years and then, at Austrade's discretion, renewed for further three year periods. This amendment would allow Austrade to grant special approval status for five years rather than three, both for initial approval and approval renewals, in order to reduce administration and increase industry certainty.

9. *Provide that the eligibility of cash payments made by applicants is limited to \$10,000 per claim.*

Under the current EMDG Act, applicants may claim the eligible export promotion expenses that they have incurred and that have been acquitted. Most payment methods are accepted for this purpose, including cash payments.

Austrade's analysis indicates that each year cash payments account for about \$2 million of expenses claimed under the EMDG scheme. For example, some applicants travel with large amounts of cash to pay overseas representatives—sometimes a relative—and then claim this for EMDG scheme purposes.

Austrade's operational experience suggests that these cash payments may sometimes be connected with dubious grant claims and a lack of clear details about an applicant's business arrangements. This amendment would protect scheme funds from possible inappropriate and difficult-to-check claims for expenses paid by large cash payments, while still enabling minor cash payments for eligible activities, such as trade fair fees or taxi fares while on eligible market visits, to be claimed.

10. *Ensure that the scheme's rules clearly set out Austrade's power to disregard any unsubstantiated, unreasonable, uncommercial or non-bona fide expense claim.*

Under the current EMDG Act, Austrade can disallow expense claims if it believes that the expenses are unreasonable or that an applicant has set up business arrangements designed to improperly obtain a grant. This amendment would merge these two provisions so as to clarify Austrade's powers to disregard expenses that are unreasonable, uncommercial or non-bona fide or those that result from structuring arrangements entered into for the sole or dominant purpose of obtaining an undue increase in EMDG entitlement.

11. *Remove the export performance test from the EMDG Act.*

Under the current EMDG Act, from the third grant onwards, applicants are subject to an export performance test. Under this test, the applicant's grant is calculated as the lesser of:

- i) 50 per cent of (total eligible expenses as assessed by Austrade - \$15,000), or
- ii) a given percentage of export earnings, depending on how many grants have been received.

Removal of this test would eliminate anomalies that result in some genuine exporters being denied grants or having their grant entitlement reduced. For example, the test creates the anomaly that businesses spending on export promotion in one year but not receiving export earnings until the following year might be denied a grant, simply because there was a time lag between promoting and receiving export sales revenue.

12. *Ensure that, as intended, commission payments remain ineligible for the scheme.*

Under the current EMDG Act, all commissions, discounts, credits and similar transactions that are based on the level of sales made by an applicant are intended to be ineligible. However, due to the technical wording of the relevant provision, the Act may not have this legal effect in all cases. This amendment would ensure that, as intended, commission payments remain ineligible for the scheme.

13. Correct minor errors in the EMDG Act.

There is an incorrect reference in section 72(3) of the EMDG Act 1997 to para 73(b), which should in fact refer to para 73(1)(b).

As well, section 105(b) incorrectly implies that funds are appropriated for the scheme for a grant year, when funds are in fact appropriated for a financial year.

The amendment bill would correct these errors.

14. Repeal the Export Expansion Grants Act 1978.

The *Export Expansion Grants Act 1978*, under which the Export Expansion Grants scheme was administered, lapsed on 30 June 1983.

There are no matters outstanding under this Act and Austrade is unaware of any reason to retain it.

5. Concluding comments

Austrade has provided this submission to assist the committee in its consideration of the Export Market Development Grants Legislation Amendment Bill 2006. Should the committee have any queries regarding the bill or this submission, please contact Margaret Ward, General Manager Export Finance Assistance Programs, by email on Margaret.ward@austrade.gov.au or by phone on (02) 9390 2763.