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To: Committee Secretary  
Foreign Affairs, Defence and Trade Committee Department of the Senate  
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Canberra ACT 2600

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**Re: EXPORT MARKET DEVELOPMENT GRANTS LEGISLATION AMENDMENT BILL 2020**

This submission is tendered to the Foreign Affairs, Defence and Trade ( FADT ) Legislation Committee by the Export Consultants Association Inc. ( ECAI ) being a national industry body comprised of members that provide specialist services to the Australian SME exporter community to assist with their applications for Export Market Development Grant ( EMDG ) entitlements.

ECAI was one of some 40 ( published ) respondents to the review of the EMDG Legislation Amendment Bill 2020 initially considered by the Rural and Regional Affairs and Transport ( RRAT ) Legislation Senate Committee. We note that the Minister, Senator the Hon Simon Birmingham, has requested that this Bill be now considered by the FADT Legislation Committee – though there does not appear to be any particular terms of reference other than that the previous submissions lodged with the RRAT Senate Committee be carried-over for consideration by the FADT Committee.

It is also noted that the EMDG Legislation Amendment Bill 2020 is also currently listed for consideration by the Senate Scrutiny of Bills Committee and we note in that context, that committee is directed to :

“.... seek advice in relation to broad delegation of administrative powers to officers at any level, why it is considered necessary and appropriate to leave most elements of the EMDG scheme to delegated legislation, and why merits review is not available for certain decisions by the CEO”.

In addition to the submission ECAI lodged for the RRAT review, we would ask that the FADT Legislation Committee consider the following additional points that have become very relevant from concerns raised by others, including the Senate Scrutiny of Bills Committee, in regard to the dangers of “framework legislation”.

The bulk of the submissions to the RRAT Committee review highlighted significant risks and uncertainty in transforming the current EMDG scheme where the operational processes are clearly defined by legislation to a proposed new scheme where the legislation acts merely as a ‘framework’

to facilitate the creation and implementation of discretionary Rules set by the Minister/bureaucratic advisors.

This approach to putting policy into action is unprecedented.

The point we table here is very much reflected by the crux of the terms of reference for the Scrutiny of Bills Committee.

The operational detail of the (current) EMDG legislation is set out in the published Austrade EMDG Administrative Guidelines and apart from a small number of specific technical elements of the scheme, the EMDG Act, its Regulations and Ministerial Guidelines clearly set out the operational Rules. In some instances (in relation to those specific technical elements) there can be inconsistencies on the part of Austrade personnel in determining a decision based on discretion.

The above point is very significant in that while at present there are only a few issues where Austrade discretion is applied, under the new 'Rules Based' EMDG program, virtually all elements of the program will be determined by discretionary-based decisions of Austrade personnel.

This leads to another very important issue in that it is a principle of Government that Australians have the right of independent review of decisions made by Government agencies ( i.e. through the Administrative Appeals Tribunal ). Under the regime proposed by the EMDG Legislation Amendment Bill, the review/appeal rights of an applicant are extinguished, with the new legislation empowering Austrade to apply discretion at will to determine a matter as to how and why any such decision is made. There has been no provision made for an applicant to challenge any such decision by Austrade.

We repeat the comments in our submission to the RRAT Committee that the timing to introduce such wholesale transformative change to the EMDG program amidst the disruption to global markets from the lingering impact of COVID 19 should be deferred until some semblance of recovery is evident.

The majority of the respondents to the RRAT Committee similarly recommended either scrapping the EMDG Legislation Amendment Bill 2020 or at least deferring any amendments until there is a global trade recovery.

The final point we make (which again repeats comments from our RRAT Committee submission) is that Austrade and the Government appear to treat lightly the prospect that tinkering with Australia's export incentive policy at this time of some indifference by countries regarding subsidies and trade barriers, may stir the ire of some nations. The recent report from the Chinese Embassy in Canberra specifically identifies the EMDG program as one of the contributing factors that constitutes unfair trade and justifies the imposition of retaliatory action.

ECAI is of the view that there are major elements of the proposed reforms to EMDG that need far more investigation and consultation with industry, as well as analysis for any WTO implications. Any amendments to the current Act must be deferred.

It is also noted that that the 'Framework' legislation will elevate the involvement of the Minister for Trade; with a Cabinet reshuffle imminent and a new Trade Minister to be shortly announced, it is surprising that this matter is not deferred as the incoming Trade Minister will have carriage of the amended EMDG program in the coming years. In addition, Austrade, the administrative agency managing the conduct of the EMDG scheme, is itself looking for both a new CEO and Deputy CEO. It

seems unwise to instigate such a radical overhaul of a longstanding and successful program at a time when the leadership of both the Ministry and Austrade, who will be jointly responsible for implementing and administering the changes including the development and content of the Rules and Regulations, are unknown.

Rod Campbell

Chairman



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