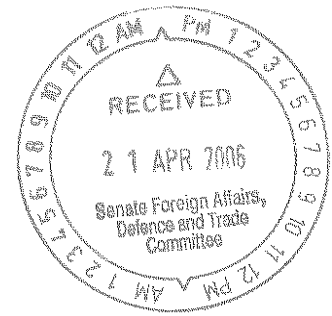




HON WARREN TRUSS MP
Minister for Transport and Regional Services
Acting Trade Minister
Acting Leader of The Nationals



21 APR 2006

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

Dear Senator *David,*

I refer to your letter of 1 April 2006, addressed to the Deputy Prime Minister and Minister for Trade the Hon Mark Vaile MP, concerning the inquiry of the Senate Foreign Affairs, Defence and Trade Legislation Committee into the provisions of the Australian Trade Commission Legislation Amendment Bill 2006 (the Bill). In Mr Vaile's absence on leave, I am responding to your letter as the Acting Minister for Trade.

To assist your inquiry, I am pleased to provide the attached joint submission on behalf of the Department of Foreign Affairs and Trade (DFAT) and Austrade. In specifically addressing the Bill and its effect and providing additional background on the Uhrig process, the submission addresses the Committee's requirements in relation to the Bill.

This joint submission constitutes the response to the request in your 1 April 2006 letter to Mr Vaile and concurrent letters to the Minister for Foreign Affairs, Mr Downer, the Secretary of DFAT and the Managing Director of Austrade.

Yours sincerely


WARREN TRUSS

SUBMISSION TO THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
COMMITTEE

INQUIRY INTO THE PROVISIONS OF THE AUSTRALIAN TRADE COMMISSION
LEGISLATION AMENDMENT BILL 2006

1. INTRODUCTION

As part of the Government's response to the *Review of the Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Review), Deputy Prime Minister Vaile assessed the Australian Trade Commission (Austrade) against the principles and recommendations of the Uhrig Review.

Austrade is responsible for delivering 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, and administers the Export Market Development Grant (EMDG) scheme, which last year delivered over 3,200 grants valued at \$124 million to small and medium exporters.

Under the templates outlined in the Uhrig Review, Austrade's status as primarily a service delivery organisation that is largely budget funded aligned Austrade closely with the executive management template. In accordance with that template, the assessment's key recommendations were to: change Austrade's governance arrangements from a governing board structure to an executive management structure; change Austrade's financial framework from the *Commonwealth Authorities and Companies Act 1997* (CAC Act) to that of a prescribed agency under the *Financial Management and Accountability Act 1997* (FMA Act); and employ Austrade staff under the *Public Service Act 1999* (PS Act). The Australian Trade Commission Amendment Bill 2006 implements these recommendations under the Uhrig Review's executive management governance model by amending the *Australian Trade Commission Act 1985*.

As part of the consultation process with Austrade in finalising the assessment, the chair of Austrade's Board informed the Deputy Prime Minister by letter of the Board's unanimous acceptance of the assessment's recommendations. Following the assessment's completion, in consultation with the Department of Foreign Affairs and Trade (DFAT) and other relevant Government departments, Austrade moved quickly to implement the changes agreed in the assessment, including organising preparation of the Bill.

A summary of the amendments proposed to the Act is included in sections 2 and 3 of this submission. Section 2 provides a general description whilst section 3 categorises amendments according to the basis of their proposal. These summaries outline the key amendments. The Explanatory Memorandum provides comprehensive detail of all proposed amendments.

2. SUMMARY OF AMENDMENTS

The effect of the Bill will be to change Austrade from a statutory authority under the CAC Act to a statutory agency that will have no legal identity separate from the Commonwealth and will bring Austrade under coverage of the PS Act. Austrade will be a prescribed agency for the purposes of the FMA Act and be governed by an executive management structure. Austrade will remain a statutory agency separate from the Department of Foreign Affairs and Trade, with the agency head reporting direct to the Minister. Consistent with the Uhrig executive management template, Austrade will provide relevant information on its operations and performance to the Secretary of DFAT in parallel to information provided to the Minister for Trade. This reflects the DFAT Secretary's overall responsibility to the Minister for the administration of the foreign affairs and trade portfolio and DFAT's role as the principal source of advice to the Minister on governance responsibilities related to Austrade (assisted by advice from Austrade's executive management).

To enact the revised governance structure, provisions relating to the Board and Board Members will be repealed. In the Board's place, the Bill establishes the position of the Chief Executive Officer (CEO) of the agency, who will be appointed by the Minister. The Commission is defined as comprising the CEO and staff, with the function of the staff to assist the CEO in the performance of his or her functions. This amendment reflects the accountability of the CEO for the management and performance of Austrade, and is also reflected by the vesting of the functions of the Commission upon the CEO.

The functions of the Commission under the old Act are not amended, nor are other key features of the Act that include: the Minister's power to provide written directions to the CEO; the CEO's obligation to comply with those directions; and the disclosure of such directions in the Annual Report. Similarly, the Act makes it clear that the Minister is not able to provide directions relating to the treatment of certain people by the Commission in the provision of services, or in the consideration of EMDG applications.

A range of powers that were prescribed for Austrade under the old Act are to be repealed. As an FMA Act body the CEO exercises the executive power of the Commonwealth and therefore it is not necessary to prescribe or limit those powers as was the case under the CAC Act. To avoid any doubt, the Act specifies two powers including: the CEO's right to exercise his or her powers on behalf of the Commonwealth overseas; and the power to charge fees for the provision of services.

Prescriptive elements that define requirements of the corporate planning cycle and annual reporting requirements will also be repealed. Under the FMA Act, Austrade will be subject to general policies of government and as such, corporate planning and annual reporting references in legislation need to be broad enough so as not to create competing or conflicting requirements should the Government introduce a general policy relating to planning or reporting activities. For instance a three year corporate plan will no longer be a legislative requirement. Similarly the legislative requirement for an operational plan is being repealed. The operational plan as it is currently prescribed is a management tool of the Board. As a consequence of the above the terms and duration of planning will be at the discretion of the CEO, under the direction of the Minister.

The Austrade Act currently prescribes a Deputy Managing Director position. The provisions which relate to the establishment of this position will be repealed on the basis that they are

inconsistent with general practice in executive management structure agencies. A Deputy CEO position does not require a legislative basis and can be created under the flexibility of the Public Service Act.

Part VIII of the Act relating to Finance is being repealed. The CEO (and the Commission) will be subject to the FMA Act and specific provisions as were previously required in this part will be unnecessary.

3. RATIONALE FOR AMENDMENTS

3.1 Amendments associated with coverage under the Financial Management and Accountability Act 1997

- Austrade will be a prescribed Agency for the purposes of the FMA Act.
- The Managing Director position will become the Chief Executive Officer (CEO).
- The Act will repeal Austrade's existing body corporate status.
- Part VIII of the Act (Finance), establishing the financial powers of Austrade, will be repealed as it will no longer be necessary. The financial framework in which the CEO and organisation will operate is established by the FMA Act.
- Austrade will form part of the Commonwealth Government and all acts and things done in the name of Austrade will be deemed to have been done by the Commonwealth Government.
- Austrade will be subject to the general policies of government.
 - The legislated description of what is included in the annual report is being repealed. Austrade's annual report will be prepared in accordance with the guidelines issued for FMA Act agencies in their operation.
 - To ensure legislated requirements are suitably broad to avoid conflict or duplication with any government policies, Austrade's Corporate Planning requirements will be amended to not specify the duration of the plan or the timing of its submission.

3.2 Amendments associated with coverage under the Public Service Act 1999

- Austrade will be a Statutory Agency for the purposes of the PS Act.
- The CEO will be the Head of that Statutory Agency.
- Transitional provisions have been included in the Bill to facilitate a smooth transfer of staff to employment under the Public Service framework.

3.3 Amendments associated with transition to Executive Management

- The Australian Trade Commission Act will be amended to repeal provisions that establish the Board and the offices of Board members.
- The requirement for the Managing Director to produce Operational Plans for the Board's approval will be repealed.
- Consequential amendments to align the governance arrangements prescribed in legislation with general executive management practice, include:
 - The statutory basis of the Deputy Managing Director position has been removed¹.

3.4 Transitional and Consequential Amendments

- Transitional provisions are included to facilitate Austrade's operations without disruption, for instance, funds appropriated to Austrade (CAC Act body) will be transferred to Austrade (FMA Act body).

¹ This position may still be used, but will not exist on a statutory basis, and will form part of the Executive Management structure governed by standard Senior Executive Service Public Service framework.

- The Act proposes consequential amendments to the *Export Market Development Grants Act 1997* and other Acts to amend and replace (or repeal) references to the Australian Trade Commission.

3.5 Drafting Amendments

Amendments proposed to the Act to reflect contemporary drafting practice include:

- The functions, duties and powers of Austrade will be conferred upon the CEO.
- The function of 'Austrade' will be to support the CEO in delivering these functions.

4. FURTHER CONSIDERATIONS

Subject to passage of the Bill through both houses of Parliament, enacting the intention of the Bill will also require an amendment to the FMA Act regulations to prescribe Austrade as an agency for the purposes of that Act.

The amendment of the *Australian Trade Commission Act 1985* to repeal the provisions establishing the governing board does not impact the capacity of government to seek the input of industry to Austrade's operations. A range of non-legislated mechanisms for consultation with industry continue to operate. These include the Free Trade Agreement Export Advisory Panel and the Trade Promotion Advisory Committee. The amendments proposed in the Australian Trade Commission Legislation Amendment Bill 2006 do not impact these consultation mechanisms, or the capacity to modify or establish additional or revised processes as required.

These changes do not amend the functions or objectives of the Australian Trade Commission, or service delivery to Australian business or the community.