

Chapter 4

Fit and proper person test, joint ventures, events promoter, payments and administration costs

4.1 The bill also introduces changes to the EMDG scheme that would affect directly export consultants by imposing a fit and proper person test; joint ventures by removing their eligibility for EMDG grants; and event promoters who would no longer be an eligible claim. In this chapter, the committee considers each change.

Fit and proper person test

4.2 An export market development grants consultant is a person who asks for, or receives, any fee for any work relating to the preparation of an application for a grant.¹ Under the existing scheme, where applicants have engaged a consultant to prepare or help to prepare an EMDG claim, there is no provision governing a 'fit and proper person' test for consultants. The bill will now apply a fit and proper person test to a consultant who has helped prepare an EMDG application.

4.3 Such a test already exists for an EMDG applicant. Under section 87AA of the EMDG Act, the CEO of Austrade may form an opinion, in accordance with guidelines determined by the minister by legislative instrument, that the person is not a fit and proper person to receive a grant. The same applies if the person has an associate who is not a fit and proper person to receive a grant. In such cases, a grant or an advance of a grant is not payable to the person.²

4.4 Under the existing scheme, where applicants have engaged a consultant to prepare or help to prepare an EMDG claim, there is no provision governing a 'fit and proper' test for consultants. Hence, consultants are not subject to the provisions of subsection 87AA. The only existing provision where an applicant may be affected by the actions of its EMDG consultant is under section 75 of the EMDG Act. This provision stipulates that an application is taken not to have been made where an individual who helped to prepare an application was, at the time the application was made, disqualified from preparing applications. The same condition applies where such an individual became disqualified at any time from when the application was made to before Austrade determined whether the applicant was entitled to a grant.³

4.5 Austrade informed the committee that EMDG consultants are prevented from lodging claims on behalf of applicants if they have been convicted of an offence under the *Corporations Act 2001* or the *Crimes Act 1914*.⁴ According to the Parliamentary

1 Section 107 of the EMDG Act.

2 Subsection 87AA(1) and section 101 of the EMDG Act.

3 Paragraph 75(a) and 75(b).

4 *Submission 9*, p. [4]. For full details, see section 78 of the EMDG Act—Disqualified Individual.

Secretary for Trade, the Hon Kelvin Thomson MP, the high cost of prosecution often results in matters not being pursued due to resource constraints. He added:

...there are issues which may arise, as they have arisen in connection with applicants, outside of the Corporations Act or the Crimes Act where the public would expect that the level of dishonesty or unacceptable behaviour was such that the continued participation of the consultant would tend to reduce the perceived probity of the scheme. These issues may include, for example, serial bankruptcy and the promotion of grant application schemes which are illegal under the EMDG Act. In addition, in the overwhelming majority of grant applicants from consultants, Austrade is requested to pay the grant to the consultant on trust for the application. It would potentially reduce public confidence in the probity of the EMDG scheme for Austrade to continue to deal with, and forward grant monies to, consultants where Austrade was aware that those consultants had an unacceptable reputation.⁵

4.6 In his submission, the Parliamentary Secretary for Trade informed the committee that EMDG consultants prepare more than half (56 per cent) of all EMDG applications. He explained further:

As a result, the professional standards applied to the services they provide are a very significant influence on the public's perception of the integrity of the EMDG scheme. Public confidence in the integrity of the EMDG scheme is a significant factor in maintaining the support of government to continue the scheme's assistance to the 3,000 to 4,000 exporters who apply each year.⁶

4.7 According to the Parliamentary Secretary, EMDG consultants are not licenced registrants. He explained that overwhelmingly, they work on a success fee basis calculated as a percentage of the EMDG grant paid. The Parliamentary Secretary stated that the average was estimated at 10 per cent across the EMDG consulting industry. He surmised that EMDG consultants, therefore, would have a 'significant financial interest in maximising the payment of grants to their clients'. Mr Thomson stated that unlike other agents such as tax, customs, migration and real estate agents, their 'obligations to clients are not balanced by formal obligations to a regulatory body'.⁷ He noted:

In the absence of any regulation or effective self-regulation of the EMDG consulting industry, there does need to be some mechanism to protect the integrity of the scheme from those few cases where the actions of an EMDG consultant may bring the entire scheme into disrepute.⁸

4.8 The Code of Practice Administration Committee, comprising EMDG Consultants representatives and Austrade, currently administer a Consultant Code of Practice. But, according to Mr Thomson, approximately only 23 per cent of practising

5 *Submission 9*, p. [4].

6 *Submission 9*, p. [3].

7 *Submission 9*, pp. [3–4].

8 *Submission 9*, p. [4].

consultants are signatories to the code. He explained that those in breach of the code can have their participation suspended or cancelled but such action does not affect their ability to act as an EMDG consultant and lodge claims. Mr Thomson argued:

The limited coverage of the code, and the lack of any effective sanction, results in the code having very little ability to protect the integrity of the EMDG scheme.⁹

4.9 As noted previously, if passed the bill would apply a fit and proper person test to a consultant who has helped prepare an EMDG application. Under Part 7 of the EMDG Act, (Application for, and payment of, grant), the bill inserts a new Division—Fit and proper person test for export market development grants consultants. Under proposed section 79A, an application is deemed not to have been made if the grants consultant is not a fit and proper person. For the purposes of the EMDG Act, an application under section 79A is not made if it meets the following criteria:

- an application for a grant is made to the CEO of Austrade; and
- an export market development grants consultant prepared, or helped to prepare, the application; and
- the CEO of Austrade forms the opinion, in accordance with guidelines determined by the minister and complied with by the CEO,¹⁰ that the export market development grants consultant is not a fit and proper person.

4.10 Under the above section, if the application is taken not to have been made, proposed section 79B requires the CEO of Austrade, as soon as practicable after forming the opinion referred to in that section, to give to the applicant a written notice:

- stating that the application is taken not to have been made; and
- setting out the effect of section 79C.

In such cases, proposed section 79C provides for an applicant to make a fresh application. To do so, the fresh application must be made within:

- 90 days after the applicant receives the notice referred to in section 79B; or
- 5 months after the end of the grant year;

whichever is the later.

4.11 In forming an opinion as to whether an EMDG consultant is a fit and proper person, the CEO of Austrade must comply with guidelines made by the Minister for Trade and Competitiveness. The CEO may, by written notice to the applicant, ask the applicant to give to the CEO a written consent of the EMDG consultant to enable the CEO to obtain information to determine whether the EMDG consultant is a fit and

9 *Submission 9*, p. [4].

10 Determined under proposed paragraph 101(1)(bc) which states 'guidelines to be complied with by the CEO in forming, for the purposes of section 79A, an opinion whether an export market development grants consultant is a fit and proper person; and'

proper person. According to the Explanatory Memorandum, if consent is not provided, under section 73, Austrade may refuse to consider the application.¹¹

4.12 Mr Vickers stated that the application of the fit and proper person test for EMDG consultants is consistent with the Government's intention to improve transparency and safeguard the good reputation of the scheme. He stated:

The public is entitled to expect that the government will administer the scheme in a way which has a high level of probity. I think the government is really responding to community expectations in that way.¹²

Industry concerns

4.13 One submitter interpreted this measure to have consultants subject to a fit and proper person test as a 'tool to enable the removal of consultants who might disagree with Austrade's assessments or who make errors in their applications.'¹³ In his view, the amendment would 'allow Austrade to be the accuser, judge, jury and executioner' and is a denial of natural justice.¹⁴

4.14 While Exportise (NSW) recognised that the application of a fit and proper test was fairly common to all government programs and departments, it was troubled by the structure of the proposed test for the EMDG program. It identified the following concerns:

- the test would be applied and administered by the Government department responsible for the administration of the program—presents issues with conflicts of interests noting that tax agents have a similar test but it is administered by the Tax Practitioners Board rather than the Australian Taxation Office; and
- the penalties—automatic suspension and required notification to clients, with no opportunity for counselling, training and supervision—were draconian and bordering on a denial of natural justice.¹⁵

4.15 A confidential submission from an established consultant business that specialises in the EMDG scheme suggested that the not fit and proper provision be removed from the bill.¹⁶ It argued that the provision is not required and that existing regulations are appropriate. The submission was of the view that section 78 of the EMDG Act makes adequate provision that only a 'fit and proper person' prepare or assist with the preparation of an EMDG claim. As noted earlier, section 78 provides for the disqualification of individuals from preparing applications if they have been convicted of an offence under the Corporations Act and the Crimes Act.

11 Explanatory Memorandum. Item 10.

12 *Committee Hansard*, 7 June 2013, p. 14.

13 Name withheld, *Submission 5*, p. 2.

14 Name withheld, *Submission 5*, p. 2.

15 *Submission 11*, p. [2].

16 Confidential *Submission 14*, p. 2.

4.16 The Export Consultants Group also noted that the fit and proper person requirement applies to many other government programs and companies. Mr Mitchell had no difficulty with a similar test applying to EMDG consultants. He acknowledged that the rationale for a fit and proper test for EMDG applicants had been in existence since 2004. Mr Mitchell said that export consultants understood that there should be a fit and proper provision for them: that they support it 'in concept'. He was concerned, however, with the practical application of this provision. He stated that together with his peers:

We feel we are really heading into uncharted waters here. We need a lot more discussion and consultation with Austrade to bed these proposed changes down and reduce the current level of angst in our community.¹⁷

4.17 The Export Consultants Group informed the committee that past experience shows that where Austrade has applied the fit and proper test to its clients that 'issues take months if not years to work through'. It stated further:

We are concerned with the practice of this section and believe that there are not sufficient internal checks and balances to ensure that the extra effort to increase the probity of the scheme that Austrade requires actually happens'.¹⁸

4.18 Mr Mitchell noted that the actual Ministerial Determination criteria to be used to administer the fit and proper rules are yet to be made public.¹⁹ According to Mr Mitchell, at the export consultants conference in February 2013, which had 'probably 80 per cent or even 90 member representation', concerns were raised about what this measure could do to destroy their business. They were concerned about not knowing what the fit and proper rules that would apply from 1 July would be. He stated further:

If the rules are modelled on the self-prepared or a client of the schemes rules they are all quite satisfactory, other than the last one. It says, in essence, that Austrade can look at a client in terms of fit and proper—and I am saying that they could do it for a consultant—for anything Austrade considers; any other matter. So for the rules of determination in the ministerial determination: we are happy with all of them, but the last one just too broad. It is too catch-all. It could be anything that Austrade considers.²⁰

4.19 The committee notes that the export consultants were particularly concerned about the possibility that the guidelines to be complied with by Austrade in forming an opinion on whether a consultant was a fit and proper person would require

17 *Submission 15*, p. 6 and *Committee Hansard*, 7 June 2013, p. 6.

18 *Supplementary Submission 7A*, p. 3.

19 *Submission 15*, p. 6.

20 *Committee Hansard*, 7 June 2013, p. 6.

Austrade to have regard 'to any matter that it considered relevant to the personal, commercial, financial or professional character, status or reputation of the person.'²¹

4.20 Mr Mitchell pointed out further that when an applicant has a not fit and proper person decision go against them, they can choose to walk away and not get their grant paid—they make a commercial decision. The situation is different for a consultant:

A fit and proper issues brought against a consultant will destroy their business, and they go out of business. So the concerns that we have are at a higher level. We are quite happy to work with Austrade as an industry group to resolve these issues and these concerns, and to look at the ministerial determination, but we have had none of that dialogue. And I do not believe this bill should be passed with that uncertainty that would impact on our business.²²

4.21 According to Mr Mitchell, the Export Consultants Group already has a mechanism in place to safeguard the integrity of their industry—the Code of Practice Administration Committee, a joint action committee with Austrade. He explained:

If Austrade had a concern with a consultant—for example, on behaviour not being fit and proper—it could be brought to the committee and, just as with accountants or lawyers and their professional societies, we have steps to counsel those people and deal with it. We have had no issue brought to that committee by Austrade in my memory, and I am sure Austrade can confirm it if they are questioned further in 13, 14 or 15 years.²³

4.22 According to Mr Mitchell, the consultancy industry would like to work with Austrade to resolve any issues with the existing mechanism and to make it work better. He stressed, however, that, over the years, Austrade had not brought any concerns to the industry's attention.²⁴ Mr Clark added that if there were questions about the probity of the scheme then 'let us look at it properly and do it via a complete review rather than this legislative tinkering that is going on at the present time'.²⁵

4.23 Mr Mitchell also argued that a body independent of Austrade should conduct the fit and proper test and there appeared to be no appeal process for consultants.²⁶

4.24 The Parliamentary Joint Committee on Human Rights also drew attention to the proposed fit and proper person test for EMDG consultants. It stated:

A finding that a person is not a fit and proper person to be involved in the process of preparing an application for a government grant is a finding that is likely to have an adverse impact on a person's business reputation. Given

21 Export Market Development Grants (Associate and Fit and Proper Person) Guidelines 2004, paragraph 3.6.

22 *Committee Hansard*, 7 June 2013, p. 6.

23 *Committee Hansard*, 7 June 2013, p. 7.

24 *Committee Hansard*, 7 June 2013, p. 7.

25 *Committee Hansard*, 7 June 2013, p. 8.

26 *Submission 15*, p. 7.

the existence of an encroachment on the right to reputation, the onus is on the government to identify why the provisions are a necessary and proportionate measure to achieve a legitimate objective (including details of any less intrusive measures that were considered and the procedural and other safeguards that apply in making such a determination).²⁷

4.25 As noted above, however, the guidelines are yet to be released. It should be noted that the guidelines are required to be made under proposed new paragraph 101(1)(bc) as legislative instruments.

4.26 Austrade acknowledged that finding a consultant not a fit and proper person would 'have a significant commercial impact on the consultant'. Even so, Mr Vickers stated it was important that:

...the scheme and its reputation be protected—because if the scheme comes into disrepute, there will not be government support for it and there will be no scheme. That would disadvantage many thousands of EMDG applicants.²⁸

4.27 The Parliamentary Secretary for Trade noted that with this in mind, a number of safeguards would apply:

- natural justice—Austrade would provide any consultant it considered may be a not fit and proper person with the reasons for suspecting so and provide them with the opportunity to respond;
- privacy rules;
- right of review—if a consultant is found to be a not fit and proper person, they may request that the CEO of Austrade review the decision;
- right to independent review—if they are unhappy with the CEO of Austrade's decision, they may request a merits review at the Administrative Appeals Tribunal (AAT); and
- right to judicial review they are also able to pursue action under the Administrative Decisions (Judicial Review) Act in the Federal Court.²⁹

27 Parliamentary Joint Committee on Human Rights, Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011, Bills introduced 5–28 February 2013, Legislative Instruments registered with the Federal Register of Legislative Instruments 5 January–15 February 2013, p. 15.

28 *Committee Hansard*, 7 June 2013, p. 14.

29 *Submission 9*, p. [4] and Mr Vickers explained further about natural justice applying to this new section. He stated, 'Natural justice is a requirement of the Administrative Decisions (Judicial Review) Act (AD(JR)) Act and there is no way Austrade can escape providing natural justice. There are also issues here which arise out of the Privacy Act. The EMDG Act specifies that there is a right of appeal to the Administrative Appeals Tribunal and the AD(JR) Act applies as well...So I think there are quite a number of safeguards here—safeguards in fact in depth—to protect consultants'. *Committee Hansard*, 7 June 2013, p. 14. The Reader's guide to the EMDG Act clearly states that the *Administrative Appeals Tribunal Act 1975* and the *Administrative Decisions (Judicial Review) Act 1977* apply.

4.28 The Australian Government Solicitor has provided advice to Austrade that the proposed provisions are consistent with Australia's international human rights obligations.³⁰

4.29 The Parliamentary Secretary for Trade explained that Austrade had been administering the 'not fit and proper person' provisions applying to EMDG applicants for nine years.³¹ Over this period, it has reviewed 75 cases resulting in:

- nine applicants being deemed not fit and proper persons to receive a grant, with decisions on four matters confirmed by Austrade following a Request for Review;
- 16 cases where the applicant failed to respond to Austrade's requests for information and Austrade applied section 73 of the EMDG Act to refuse to consider the matter further;
- 27 matters currently under consideration; and
- no applicant appealing an Austrade decision under the not fit and proper test to the Administrative Appeals Tribunal.³²

4.30 Considering these results, the Parliamentary Secretary concluded that Austrade brings 'a significant level of experience to the assessment of whether or not a consultant is a fit and proper person'.³³

Joint ventures

4.31 Austrade may grant a special approval to groups of small to medium sized Australian businesses which co-operate or collaborate in a joint venture style marketing arrangement to pursue specific export activities. This Joint Venture status enables the group, which would normally be ineligible, to access the EMDG scheme.³⁴ At the moment, joint ventures that satisfy assessment criteria are eligible to receive up to five grants for a specified project or activity.³⁵

4.32 An approval of a group of persons as a joint venture must: specify the activity, project or purpose for which the group is approved; and specify the member of the group who is the nominated contact member for the purposes of applications and payments of grant. Only a resident of Australia may be specified as a nominated

30 *Submission 9*, p. [4].

31 *Submission 9*, p. [4].

32 *Submission 9*, p. [4].

33 *Submission 9*, p. [4].

34 Austrade website, *Approved Joint Venture status*
<http://www.austrade.gov.au/search.aspx?ModuleID=8367&keywords=joint%20venture&multiSite=False>

35 Explanatory Memorandum, Item 2. See subsections 7(2) and 89(4) of the EMDG Act.

contact member. A grant, or an advance on account of a grant, that is payable to an approved joint venture is to be paid to the nominated contact member.³⁶

4.33 The following table provides an indication of the number of approved joint ventures since 2012.

Table 4.1: Approved joint ventures

Approved Joint Ventures FY 2009–10 to FY 2012–13 ³⁷		
Year	Number of Joint Ventures	Number of members
2012–13	10	49
2011–12	10	49
2010–11	15	88
2009–10	18	107

4.34 Under the proposed legislation a joint venture will no longer be eligible for an EMDG grant.³⁸

Low numbers

4.35 Mr Vickers acknowledged that the joint venture provisions have existed for a very long time. But, he explained that after many years, only a few joint ventures apply for grants—ten—which 'has even gone down from what it used to be four years ago'. In Mr Vicker's opinion, the joint venture was 'just not an acceptable provision for many small businesses'.³⁹

4.36 Austrade suggested that only a few consultants promoted joint ventures. In its experience, the consultants specialising in promoting the joint ventures do 'not adequately enable Austrade to assess their eligibility'.⁴⁰ Mr Vickers said:

There are many times when Austrade has difficulty getting the evidence that that is, in fact, the case. We get very generalised statements back—things which are inconclusive. Once it is established that they are not operating jointly, the grant is not payable. So it can become a difficult issue. As we have noted, a number of these joint ventures are either promoted or managed by consultants. The responsiveness is not always there.⁴¹

4.37 The Parliamentary Secretary for Trade explained that increasingly Austrade has found that some joint ventures were being used as a vehicle to attempt to allow companies that 'have exhausted their allowed number of EMDG grants to enter an

36 Subsection 89(4) of the EMDG Act.

37 *Submission 9*, p. [3].

38 Item 24 and 27 of the bill, which repeals paragraph 6(1)(e) and subsection 7(2).

39 *Committee Hansard*, 7 June 2013, p. 15.

40 *Submission 9*, p. [3].

41 *Committee Hansard*, 7 June 2013, p. 15.

arrangement primarily to attempt to re-qualify for further grants.⁴² Mr Vickers stated that Austrade had detected some 'increase in the number of joint ventures which seek to recycle applicants—to bring back in people who have already received their grants'. He indicated that Austrade was concerned about the implications of that recycling for 'the probity of the scheme'.⁴³

Industry concerns

4.38 Mr Mitchell argued that joint ventures do work with majority of these clusters of exporters in regional areas.⁴⁴ He noted that smaller exporters who, under the EMDG joint venture provisions, band together to share common overseas marketing costs would be 'taken out of the equation'.⁴⁵ According to Mr Mitchell some 'will have to stop exporting as the medium spend level of \$20,000 will be too high'.⁴⁶ He maintained that no consultation or external study was undertaken about the EMDG and joint ventures.⁴⁷

4.39 Mr Mitchell accepted the proposition that administratively there may be extra work involved or issues with the approval of the joint ventures. He, however, saw the measure as 'an opportunity lost'.⁴⁸ He explained that while Austrade's concerns may be real, they 'should not preclude there being this good vehicle for small exporters'.⁴⁹ According to Mr Mitchell the effect on small exporters would be immediate:

Small exporters will be excluded from the scheme, because to access the scheme at this time—and it goes up and down left, right and centre—the current spend level is \$20,000. If you are a small exporter and only spending \$12,000, you will not be able to access the scheme. You will not be able to get critical mass. You might want to go to China and go to a wine show; you might want to share the cost of a trade show. You are being encouraged by the Austrade to do so. You bond as a group and go together. But therefore you will not be able to recoup some of your expenditure, so people will not go.⁵⁰

4.40 The Canberra Business Council noted that although there have been only a small number of joint ventures, their removal 'does limit the early stage capacity

42 *Submission 9*, p. [3]. Mr Vickers told the committee that based on the history of joint ventures, many of the members of such enterprises are previous EMDG applicants. *Committee Hansard*, 7 June 2013, p. 15.

43 *Committee Hansard*, 7 June 2013, p. 15.

44 *Submission 15*, p. 6.

45 *Submission 15*, p. 6.

46 *Submission 15*, p. 6.

47 *Submission 15*, p. 6.

48 *Committee Hansard*, 7 June 2013, p. 9.

49 *Committee Hansard*, 7 June 2013, p. 9.

50 *Committee Hansard*, 7 June 2013, p. 9.

building that can assist microbusiness and SME's to develop export markets'.⁵¹ The Council informed the committee that:

In recent months there have been several groups in the Arts and Screen industry within the ACT that have indicated this joint venture model, where businesses cooperate in a marketing arrangement, would assist them to develop the local industry.⁵²

4.41 It stated that joint ventures are an 'invaluable tool for building capacity, both from the direct dollar benefits generated from EMDG, but also from learning from each other'.⁵³ Mr Clark agreed with this view. Referring to the scale of overseas markets, noting that some Asian markets are enormous with populations the size of Australia's, Mr Clark spoke of the need for joint ventures.⁵⁴ He stated:

The capacity for Australian exporters to service the market need is increasingly challenged unless they are getting together and forming a critical mass to be able to supply at the level, speed and frequency that is required by the market. We need to think deeply. Let's do it properly, not by this type of process.⁵⁵

4.42 The Export Consultants Group argued that the removal of the joint venture provisions was being done only for 'administrative expediency'. It stated further that it appeared as though Austrade did not undertake any work 'to look at the loss of overall export impact from the removal of such a provision and the impact of the regional areas where most of the joint venture applications are based'.⁵⁶

Austrade's response

4.43 Overall, Mr Vickers told the committee that from Austrade's perspective, the change was 'fundamentally about the efficiency of the scheme and about streamlining and reducing red tape'.⁵⁷ He said

A straightforward claim is not a difficult thing to process. Some of these joint ventures do take a considerable amount of time to get adequate information to satisfy ourselves that the money is being appropriately invested in the joint venture.⁵⁸

Events promoter

4.44 Under the current legislation 'an event' may be included as an eligible product for EMDG purposes if it satisfies a number of conditions such the event is held in

51 *Submission 16*, p. [2].

52 *Submission 16*, p. [2].

53 *Submission 16*, p. [2].

54 *Committee Hansard*, 7 June 2013, p. 10.

55 *Committee Hansard*, 7 June 2013, p. 10.

56 *Supplementary Submission 7A*, p. 4.

57 *Committee Hansard*, 7 June 2013, p. 15.

58 *Committee Hansard*, 7 June 2013, p. 16.

Australia and there is an events promoter for the event.⁵⁹ An events promoter is a person that markets the event, under a written contract between the person and the event holder, to persons outside Australia.⁶⁰ The EMDG Act provides that 'event promoters promoting a range of Australian events, including conferences, meetings, conventions and exhibitions, are able to receive EMDG grants'. The Explanatory Memorandum states:

They are able to receive grants for spending to maximise their Australian clients' delegate or audience number, notwithstanding the fact they are paid by these clients to undertake the event promotion work.⁶¹

4.45 Under proposed amendments, the promotion of events by an events promoter ceases to be an eligible product category under the EMDG Act from grant year 2013–14.⁶² As a consequence of this amendment, the bill makes changes to remove relevant references to an events promoter.⁶³

4.46 The Parliamentary Secretary for Trade described event promoters as 'agents for event holders, the body that actually owns the event being promoted'.⁶⁴ Event holders have always been and will remain, eligible to claim EMDG grants. With regard to event promoters, he explained that very few grants are paid to them with an estimated six grants paid 2012–13, which has been consistent over the last five years.⁶⁵

Table 4.2: Event promoters⁶⁶

Event Holders and Event Promoters FY 2009–10 to 2012–13 (Electronically Lodged Claims)*	
Year	Event Promoters/agents (proposed not eligible)
2012–13 to date	3
2011–12	2
2010–11	3
2009–10	6
2008–09	11

59 Section 25A of the EMDG Act.

60 Section 107 of the EMDG Act.

61 Explanatory Memorandum, Item 4.

62 Explanatory Memorandum, Item 5 repeals section 25A Eligible Events.

63 See for example amendments to subsections 37(2), 37(3) of the EMDG Act—Items 5 and 6 of the bill.

64 *Submission 9*, p. [3].

65 *Submission 9*, p. [3].

66 *Submission 9*, p. [3].

* *Figures are for electronically lodged claims which are approximately 50 per cent of all claims lodged. Other claims do not identify this category of claimant.*

4.47 According to Austrade, this small number of event promoters generates 'a disproportionate amount of red tape for the larger number of event holders', who 'need to be able to satisfy Austrade that the expenditure they are claiming has not also been claimed by an event holder'.⁶⁷

4.48 Subsection 37 of the EMDG Act, however, still applies. It states that in relation to an applicant, an eligible promotional activity is for an approved promotional purpose if it is 'carried out for the purpose of creating, seeking or increasing demand or opportunity in a foreign country'. Thus, according to the Explanatory Memorandum, applicants promoting eligible Australian events as principal will continue to be eligible for EMDG support under the eligible services product category. Also, 'applicants promoting venues and associated facilities for meetings, conventions and exhibitions as principal' will continue to be eligible for EMDG support.⁶⁸

4.49 The Association of Australian Convention Bureaux argued that the removal of event promoters from the EMDG scheme would 'reduce the assistance and support provided to an important part of the business events sector'.⁶⁹ In its view, the proposed amendment:

...would have a significant impact resulting in fewer international delegates for Australia and therefore reduced export revenue, and a reduction in all indirect benefits to the economy by business events.⁷⁰

4.50 Drawing attention to the current global economic conditions and the high Australian dollar, which makes Australia a less attractive long haul destination, the Convention Bureaux argued that it was not the time to 'be reducing support for delegate boosting activities'.⁷¹

Payments directly by applicant

4.51 According to Export Solutions, in the past Austrade had 'allowed expenses whereby a third party (director or shareholder) pays for marketing costs using their own funds and charges this as a loan against the company'. Under the proposed amendments such a practice will no longer be accepted and expenses paid for in this manner will not be eligible.⁷²

67 *Submission 9*, p. [4].

68 Explanatory Memorandum, Item 4.

69 *Submission 13*, p. 2.

70 *Submission 13*, p. 2.

71 *Submission 13*, p. 2.

72 Export Solutions, website, 'Rule changes to the EMDG Program effective 01July 2013', <http://www.exportsolutions.com.au/rule-changes-to-the-emdg-program-effective-01-july-2013/>

4.52 The bill amends paragraph 58(2)(a) to make clear that applicants will be required to pay for expenses incurred either directly or by credit card. This change is intended to simplify the scheme and 'confirms the scheme's principle that the applicant itself (rather than its associates or any other party) should incur a real cost and "bear the risk" in developing international businesses'.⁷³ Generally, witnesses did not raise concerns with the proposed amendment.⁷⁴ Mr Mitchell noted that the decision was in order to make it easier for Austrade to audit transactions. He indicated that the Export Consultants Group would support the change but was of the view that there would be some practice interpretations. He outlined one complication where a parent company in a group has the bank account in subsidiaries within that group. He explained further:

With no bank accounts, the transaction may go through the parent company and be allocated in correct accounting terminology and practice to a subsidiary and that subsidiary is the applicant under the scheme.⁷⁵

4.53 He noted that there had been an industry group meeting with Austrade where the Export Consultants Group raised concerns that 'in practice it may be difficult and cause concerns, particularly with group structures'. Austrade is yet to respond to the Export Consultants Group.⁷⁶

Disbursement of payment of grant

4.54 Applicants entitled to a grant of less than the 'initial payment ceiling amount (IPCA) are paid their grant at the time the claim is determined'. The IPCA amount, in relation to a grant year, means the amount determined by the Minister to be the initial payment ceiling amount for that grant year.⁷⁷

4.55 Applicants entitled to an amount that exceeds the IPCA are paid the initial amount and then, following the setting of the balance distribution, are paid the balance of their entitlement often 'many months later'. The Explanatory Memorandum notes:

Under the EMDG Act's current two-tranche payment arrangements, Austrade is unable to pay the full amounts of assessed grants to applicants as quickly as desirable when the scheme demand is lower than expected or where additional money is appropriated for the scheme.⁷⁸

4.56 According to the Explanatory Memorandum, this inability to pay the full amounts as quickly as desirable arises from the interaction of two EMDG provisions, namely

73 Explanatory Memorandum, Item 9.

74 Mr Norris, *Committee Hansard*, 7 June 2013, p. 10.

75 *Committee Hansard*, 7 June 2013, p. 10.

76 *Committee Hansard*, 7 June 2013, p. 10.

77 Section 107. The minister makes such a determination under section 68 of the Act.

78 Explanatory Memorandum, Item 13.

- grant amounts that exceed the IPCA are determined after the 'balance distribution date': and
- current paragraph 82(a) provides that grants determined after the 'balance distribution date' for a grant year and before the following 1 July cannot be paid until that date.⁷⁹

4.57 The bill amends section 82 to provide that 'if Austrade determines the amount of a grant before the 1 July following the "balance distribution date", the grant becomes payable on the day the grant is determined'.⁸⁰

4.58 The Association of Australian Convention Bureaux supported this amendment for grants to be paid more quickly. It recommended, however, that this measure could be taken further to ensure that 'both the grant determination for Approved Body submissions and full payment of the subsequent grant be made within the financial year following the grant'.⁸¹ It noted that many EMDG applications made by the Convention Bureaux for the grant year 2010–11 were not determined or paid until 2012–13 which, in its experience, created great difficulties when planning for future international marketing activities.⁸²

Administration costs

4.59 Currently the administration costs of the EMDG scheme are paid out of the money appropriated by the Parliament for meeting payments under the EMDG Act but must not exceed 5 per cent of the appropriation amount in any financial year.⁸³

4.60 The proposed legislation would remove this cap and confer on the minister the power to set the budget for administrative expenses from time to time. The Parliamentary Secretary for Trade explained that the Minister for Finance must agree to the change which brings the EMDG scheme 'into line with other similar programs'.⁸⁴ He stated further:

The assessment of EMDG claims is inescapably a labour-intensive task: some 84 per cent of EMDG administrative expenses are staffing costs. The combination of a 17 per cent reduction in the administrative budget due to the reduction in the overall EMDG budget of \$25 million and a claim assessment workload similar to the current year, would make it impossible for Austrade to adequately manage financial and reputational risk or process claims in a timely way. Austrade would not be able to adapt

79 Explanatory Memorandum, Item 13.

80 Explanatory Memorandum, Item 13.

81 *Submission 13*, p. 2.

82 *Submission 13*, p. 2.

83 Explanatory Memorandum, Items 17 and 18.

84 *Submission 9*, p. [5].

processes or improve efficiency by such a significant amount in such a short period of time.⁸⁵

4.61 The proposed amendments stipulate that the costs of administration must not exceed the cost cap for the financial year. The cap for a financial year is the amount worked out by multiplying the appropriation amount for the financial year by the percentage specified in a determination made, by legislative instrument, by the minister for the purposes of this subsection. This Ministerial Determination may specify different percentages for different financial years.⁸⁶

4.62 Mr Mitchell was of the view that an increase in the administrative budget was not warranted. He argued that exporters were 'being asked to do more with less and so should Austrade' and that this increase would 'mean less money to exporters as more will be spent on administration'.⁸⁷

Reader's guide

4.63 The Reader's guide is a seven page introduction to the EMDG Act that is intended to provide a general idea of the purpose of the Act and some information about its structure. It also explains briefly how the operation and interpretation of this Act is affected by other Acts. Item 1 of the bill repeals the Reader's Guide to the Act, which, according to the Explanatory Memorandum, is 'a simplification measure'.

4.64 The proposed removal of this guide drew no comment.

85 *Submission 9*, p. [5].

86 Item 18 of the bill.

87 *Submission 15*, p. 3.