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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Trade Legislation Amendment Bill (No. 1) 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Trade and Investment,
the Hon Andrew Robb AO MP)

TRADE LEGISLATION AMENDMENT BILL (NO. 1) 2016

OUTLINE

This Bill is for an Act to amend legislation relating to export and trade, and for other purposes.

Schedule 1 of this Bill amends the *Export Market Development Grants Act 1997* to give effect to several key recommendations resulting from the 2015 Review of the Export Market Development Grants (EMDG) scheme. It also makes minor policy and technical amendments to improve the operation of the *Export Market Development Grants Act 1997*, and delivers savings to align the scheme closer to its budget.

The purpose of Schedule 1 of this Bill is to amend the *Export Market Development Grants Act 1997* (the Act) to:

- Remove communications as an eligible expenditure category to reflect the reduced cost of communications as a result of advances in technology
- Place a limit of \$15,000 on the free sample expenditure category, noting that for claimants that are combining two years of expenditure, and one of these years is the 2015-16 financial year, no limit applies
- Describe the promotional literature or other advertising expenditure category so that it mentions literature or material in electronic or any other form
- Repeal the provision allowing for the reimbursement of in-country travel (other than air fares) and change the amount of the daily allowance for overseas visits from \$300 to \$350
- Add to the list of excluded expenses those relating to eligible promotional activities, things or eligible products that the CEO of Austrade considers may have had a detrimental impact on Australia's trade reputation.
- Permit Austrade to direct funds from other sources towards EMDG administration costs.
- Remove the requirement that the independent review of the scheme is to be conducted with a stipulated commencement date for the specific purpose of making recommendations about the continuity of the scheme. Instead, set the date by which the next review is to be completed and that later review completion dates are to be determined by the Minister
- Amend the definition of a grant year, which is currently up to 30 June 2016, so that the scheme can continue beyond that date.

Schedule 2 of this Bill amends the Australian Trade Commission Act 1985, changing the Commission's name from the Australian Trade Commission to the Australian Trade and Investment Commission, and makes consequential changes to other Acts as a result of this change.

The purpose of Schedule 2 of this Bill is to better reflect both the agency's significant role in promoting and attracting foreign investment and the priority the Government has placed on

attracting foreign investment to secure Australia's future prosperity.

It is not proposed to change the corporate moniker 'Austrade' as this name and brand carries significant goodwill with business in Australia.

FINANCIAL IMPACT

Schedule 1: Expenditure under the *Export Market Development Grants Act 1997* is set through annual Appropriation Acts. A capping mechanism ensures that expenditure under the scheme is limited to the amount appropriated.

Schedule 2: The changes to the *Australian Trade Commission Act 1985* have negligible financial impact. They are limited to rebranding stationery, official documents and events, the great majority of which can be changed on line.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Bill does not raise any human rights issues and is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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ABBREVIATIONS

EMDG Act	<i>Export Market Development Grants Act 1997</i>
grant year	The year in which expenses are incurred by a grant applicant
Austrade	Australian Trade Commission
Austrade Act	<i>Australian Trade Commission Act 1985</i>
the scheme	The scheme of financial assistance to exporters covered by the <i>Export Market Development Grants Act 1997</i>

NOTES ON CLAUSES

Clause 1 This Act may be cited as the *Trade Legislation Amendment Act (No. 1) 2016*

Clause 2 Sections 1 to 3 of this Act commence on the day on which it receives Royal Assent.

Schedule 1 of this Act commences on 1 July 2016.

Schedule 2 of this Act commences on a single day to be fixed by Proclamation. If the provisions do not commence within the period of six months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.

Clause 3 There is one Schedule amending the *Export Market Development Grants Act 1997*.

There is a second Schedule amending *the Australian Trade Commission Act 1985*.

SCHEDULE 1—Amendment of the *Export Market Development Grants Act 1997*

Items 1, 9, 10, 11

Section 33 of the EMDG Act details claimable expenses in respect of eligible promotional activities. One category of eligible expenditure is any communications by the applicant or its agent with a potential buyer or a distributor, representative or consultant to the extent to which the communication is made for an approved promotional purpose.

The use of information technology as a communications tool has grown in prominence and as a result the cost of communications has changed, to the extent that the automatic three percent addition to a claim is no longer reflective of the actual cost of communication. The amendments under items 1, 9, 10 and 11 remove communications as an eligible expenditure category under the EMDG Act. This is a cost-saving measure.

Items 2, 4 and 15

Section 33 of the EMDG Act provides that the provision, primarily for an approved promotional purpose, of free samples to a person who is not a resident of Australia is eligible expenditure. All reasonable expenses incurred by the application that are attributable to the actual cost of providing the samples are permitted. There is currently no cap on the maximum value of free samples, and as a result some free samples claimed have a very high value.

This amendment to the Act places a cap of \$15,000 on the total value of all free samples in any one claim, and is a cost-saving measure.

This provision of the Act has been drafted so that a cap is not imposed on businesses that: were not a grantee in a previous grant year; and the preceding financial year commenced on 1 July 2015 (ie they had incurred eligible expenditure at a time when they did not know that a cap would be in place).

Item 3

While website expenses have always been eligible expenditure under the category “Promotional literature and advertising” (see subsection 33(2) (item 6)) this category does not make this inclusion apparent.

This item adds the words, “(whether the literature or material is in electronic form or any other form).”

Items 5 and 6

Section 34 of the EMDG Act deals with expenses relating to a marketing visit. Where the visit is made to a place outside of Australia, the Act provides for \$300 per day contribution for each working day during the visit (up to 21 days) that was primarily devoted to furthering the approved promotional purpose for which the visit was made. Applicants are also permitted to claim ground transport expenses. However, the applicant must substantiate these expenses and provide details in the application schedules.

This amendment repeals the subsection relating specifically to ground transport expenses (item 5), and increases the daily allowance for overseas visits by \$50 per day to \$350 making some provision for ground transport expenses, which were previously treated as a separate eligible expenditure category, (item 6).

As a result, this amendment is a cost-saving measure. This change also reduces the red tape burden on applicants, who are no longer required to itemise and retain records or complete lengthy schedules relating to ground transport costs (such as taxi and bus trips).

Items 7 and 8

These two items address the issue of the Government’s support, through EMDG, of a product or promotion where, in the opinion of the CEO of Austrade, the activity or product may have had a detrimental impact on Australia’s trade reputation.

While an activity or a product may not in itself be illegal, the Government’s support of such products or activities by way of a grant may cause detriment to Australia’s standing as a trading nation.

Item 12

Section 105 of the EMDG Act restricts Austrade from directing funds from other sources towards the administration of the Act.

This item removes the limitation on Austrade applying funds from other sources for EMDG administrative purposes, so that it can supplement the EMDG administration funds if required.

For example, if Austrade experiences an unexpected growth in demand for the scheme, it has no mechanism to manage the additional workload except to not process claims, or take more risk. Taking greater risk ultimately leads to greater cost and the probable misallocation of funds to ineligible grants.

The amendment preserves the original intent of this provision of the Act, as it ensures that 95 per cent of the appropriation for EMDG is applied to funding claimants for export promotion activity, and that any unspent funds are returned to the Commonwealth.

Items 13 and 14

Section 106A of the EMDG Act requires the Minister to cause the scheme to be independently reviewed (to commence by 1 January 2015) for the purpose of making recommendations about the continuation of the scheme.

These items provide that the first review under the amended Act must be completed no later than 31 December 2021. Each later review must be completed, and a written report given to the Minister, by a date determined by the Minister.

These items retain the requirement for an independent review and the requirement for the Minister to table the report in the Parliament.

Item 16

The definitions section of the EMDG Act (s107) defines a grant year up to 30 June 2016. This item amends the definition of a grant year so that the scheme can continue without a specified termination date.

A requirement for a reviewer to make a recommendation on the continuation of the scheme and the possibility of a last grant year creates significant uncertainty with SME claimants and thereby undermines the purpose of the scheme. Further, there would be nothing to preclude a government from extending, terminating or adjusting the scheme at any time, regardless of the definition of a grant year.

Item 17 Application provisions

The amendments made by items 1 to 11 of Schedule 1 apply in relation to grants in respect of a grant year commencing on or after 1 July 2016.

SCHEDULE 2—Amendment of the *Australian Trade Commission Act 1985*.

This name change will better reflect both the Austrade’s significant role in promoting and attracting foreign investment and the priority the Government has placed on attracting foreign investment to secure Australia’s future prosperity. The corporate moniker ‘Austrade’ will not be changed, as this name and brand carries significant goodwill with business in Australia.

Items 1 and 2

These items amend the short title of the Act.

Items 3, 4, 5, 6, 7, 8, 9 and 10

These items change references to the Australian Trade and Investment Commission.

Items 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21

These items make changes to other Commonwealth Acts that currently refer to the Australian Trade Commission.