Purpose

To create the Australian Trade Commission (the Commission) as a statutory authority. The Commission will take over the functions of various statutory and government bodies dealing with the promotion and assistance of exports as well as performing various new functions in relation to the export of goods and services.

Background

The Australian Trade Commission Bill and the Australian Trade Commission (Transitional Provisions and Consequential Amendments) Bill were introduced on 11 October 1985 and withdrawn before the introduction of this Bill. The Speaker of the House of Representatives gave the following explanation for their withdrawal: "... the Australian Trade Commission Bill 1985 and the Australian Trade Commission (Transitional Provisions and Consequential Amendments) Bill 1985 ... do not comply with the provisions of standing order 213, as the long titles of the Bills do not agree with the long titles which were indicated in their notices of presentation. Pursuant to the provisions of standing order 214, therefore, the Bills shall be ordered to be withdrawn."[1]

The promotion and assistance of Australian exports is currently performed by a number of bodies, principally the Export Finance and Insurance Corporation (EFIC), the Australian Overseas Projects Corporation (AOPC), the Export Development Grants Board (EDGB), the Trade Commissioner Service (TCS) and the Department of Trade. These bodies have come into existence over a number of years and each performs specific tasks that will be transferred to the Commission.
EFIC was created in 1974 with the aim of encouraging exports by providing a range of insurance, guarantee and financing facilities. Specifically, EFIC insures exporters against non-payment by overseas buyers, acts as guarantor to Australian banks which provide finance to exporters, provides finance to capital goods exporters at concessional rates of interest and insures Australian firms' overseas investments from loss through expropriation, war or exchange transfer delays. In 1983-84, EFIC covered goods valued at $2,575.7 million and transferred a surplus of $12.1 million to its reserve account.[2]

AOPC was established by the Australian Overseas Projects Corporation Act 1978 and its powers and functions are listed in sections 6 to 10 of that Act. In brief, AOPC's functions are to assist private Australian organisations to carry out, and to bid for, overseas development projects with the view to arranging for the necessary work to be performed by private, Australian organisations. AOPC is not to compete with private, Australian organisations that are willing and able to carry out a development project and is not to be the prime contractor unless it has been requested to do so by a private, Australian organisation and receives ministerial consent. During 1983-84, AOPC secured $35 million worth of business and made an operating loss of $351,000.[3]

EDGB was established in 1974 to administer the Export Market Development Grants Scheme. The Scheme, which was amended earlier in the Budget Session, aims to encourage the development of overseas markets by providing taxable cash grants to cover 70% of eligible expenditure up to a maximum of $200,000 per year. For further information refer to the Digest for the Export Market Development Grants Amendment Bill 1985 (No. 85/163).

TCS was established in 1933 and has grown so that during 1983-84 there were 130 Trade Commissioners located at 54 ports in 44 countries.[4] TSC aims to encourage and facilitate the efforts of Australian exporters through advice on marketing opportunities, assistance in promotions and through government to government representations. TCS cost $25.7 million in 1983-84.[5]

The Department of Trade assists Australian exporters through its marketing and promotion areas. These areas undertake considerable research into potential foreign markets as well as making representations to governments in an attempt to increase Australia's share of foreign markets.
The decision to establish the Commission was announced by the Minister on 23 April 1985.

Outline

The Bill consists of 9 Parts, a number of which deal with the administration of the Commission. The Commission's functions, powers and activities are outlined in Parts II to V which also establish the Commission's Board of management.

Main Provisions

For a detailed analysis of the clauses of the Bill refer to the Explanatory Memorandum.

The Commission is established as a corporation by clause 7.

The functions of the Commission are listed in clause 8 and include the assistance and promotion of Australian exports.

The Minister is to be empowered to give directions to the Commission but will not have the power to give directions regarding specific contracts, agreements, guarantees or persons (clause 10). Also see clauses 44, 48 and 50.

The Australian Trade Commission Board (the Board) is to be established by clause 11.

The membership of the Board is dealt with in clause 12. It is to have between 9 and 11 members.

The functions of the Board are contained in clause 13. It is to be responsible for the policy and conduct of the Commission.

Members of the Board are to disclose any direct or indirect pecuniary interest they have in a matter before the Board. If a member has such an interest, they are not to take part in the decision on those matters unless approved to do so by the Board or the Minister (clause 22).

The general powers and duties of the Commission are listed in Part IV of the Bill (clauses 23 to 32). Some of the more important powers and duties are:
to do all things necessary or convenient for the performance of its functions (clause 23);

not to engage in trade except for its day-to-day operations or for the performance of its functions while in association with an Australian organisation (clause 25);

to facilitate the involvement of Australian organisations in overseas development projects. To this end, the Commission will be able to enter contracts for overseas development projects where some or all of the work is to be performed by Australian organisations (clause 26);

to provide advice to promote trade (clause 27);

to form companies, enter partnerships or other business associations for the performance of its functions (clause 29);

to develop proposals for schemes to assist export market development (clause 30).

The insurance and finance powers of the Commission are contained in Part V of the Bill (clauses 33 to 50) and include those services currently provided by EFIC. Some of the more relevant provisions are:

the Commission may enter into reinsurance contracts (clause 34);

the Commission is empowered to use EFIC's name and seal (clause 35);

the Commission may insure persons carrying on business in Australia from losses arising through a failure to receive payment for exports (clause 36);

clause 38 will empower the Commission to guarantee loans to Australian suppliers for the financing of exports. The Commission will also be able to make up the difference when the return to the lender was less than that agreed between the Commission and the lender;

the Commission will also be able to give guarantees, and to make up returns, to lenders who finance the making of payments on export contracts (clause 39);
clause 44 concerns insurance and guarantees to be provided in the national interest. The Commission may apply to the Minister for authorisation to enter such an arrangement or the Minister may direct the Commission to enter into specific classes of insurance or guarantees. The Commonwealth will bear a proportion of liability and the extent of liability is to be published in the Gazette;

the Commission is to be empowered to insure overseas investments by persons carrying on business in Australia against losses resulting from approved causes (clause 47);

clause 48 deals with contracts of insurance entered into in the national interest and is substantially similar to clause 44;

the Commission will be able to finance eligible export transactions (clause 49);

clause 50 deals with loans to be made in the national interest and is substantially similar to clause 44.

Part VI of the Bill (clauses 51 to 63) deals with the staffing of the Commission. Amongst other aspects this Part deals with the appointment of a Managing Director and Deputy Managing Director (clause 51), their duties (clause 53), their remuneration (clause 54) and the grounds upon which they may be removed (clause 59). Clauses 60 to 63 deal with the employment of other staff.

Part VII of the Bill (clauses 64 to 69) deals with Corporate and Annual Operational Plans. The Commission is to prepare a Corporate Plan (clause 64) and seek the Minister's approval for such a plan (clause 65). The Annual Operational Plans are to be developed by the Managing Director (clause 67) and are not to take effect without the Board's approval (clause 68).

Part VIII of the Bill (clauses 70 to 89) deals with the Commission's finances. The Commission's funds are to be appropriated by Parliament (clause 71). It is to prepare estimates of its revenue and expenditure (clause 76), and to be empowered to borrow from the Commonwealth on conditions determined by the Minister for Finance (clause 78) and tax exempt (clause 83).
The Government is to guarantee payment of all monies due and payable by the Commission (clause 82). In cases where contracts and guarantees are entered into in the national interest, the Commission is to pay revenue to the Government (except that proportion relating to the Commission's accepted liability). The Government will be liable to discharge any liability (except for that proportion of liability accepted by and payable by the Commission (clause 84).

Regulations may be made specifying the maximum contingent liability of the Commission (clause 86) and the maximum loans it may make (clause 87).

Clause 92 will require the Commission to submit an annual report.

For further information, if required, contact the Economics and Commerce Group.

3 December 1985

Bills Digest Service
LEGISLATIVE RESEARCH SERVICE

References
5. Ibid., p.8.

© Commonwealth of Australia 1985

Except to the extent of the uses permitted under the Copyright Act 1968, no part of this publication may be reproduced or transmitted in any form or by any means, including information storage and retrieval system, without the prior written consent of the Department of the Parliamentary Library. Reproduction is permitted by Members of the Parliament of the Commonwealth in the course of their official duties.