Export Market Development Grants Amendment Bill 2014

Eugenia Karanikolas
Economics Section

Contents

Purpose of the Bill ................................................................. 2
Background ............................................................ 2
Who is eligible to get the EMDG? .................................... 2
Key changes to the EMDG scheme................................. 3
Export Market Development Grants Bill 2013 ......................... 3
Mortimer Review ................................................................ 4
Committee consideration .................................................. 4
Senate Standing Committee for the Scrutiny of Bills ................. 4
Parliamentary Joint Committee on Human Rights ...................... 4
Rationale for the Bill .............................................................. 4
Policy position of non-government parties/independents ...... 4
Position of major interest groups ........................................ 5
  Australian Chamber of Commerce and Industry (ACCI) ......5
  The Winemakers Federation of Australia (WFA) ............... 5
  Australian Tourism Export Council (ATEC) ...................... 5
Financial implications ......................................................... 5
Statement of Compatibility with Human Rights ....................... 5
Key issues and provisions .................................................. 5
Concluding comments ...................................................... 6

Date introduced: 6 March 2014
House: House of Representatives
Portfolio: Trade and Investment
Commencement: On Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation
When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
Purpose of the Bill

The purpose of the Export Market Development Grants Amendment Bill 2014 (the Bill) is to amend the Export Market Development Grants Act 1997 (the Act)\(^1\) to:

- increase the maximum number of grants able to be received by eligible exporters from seven to eight
- decrease the minimum expenses threshold required to be incurred by an eligible exporter from $20,000 to $15,000
- reduce the amount deducted from an eligible exporter’s provisional grant amount from $5,000 to $2,500
- extend the fit and proper person rules of the Act to prevent the payment of grants to applicants who have engaged an Export Market Development Grant (EMDG) consultant assessed to be not a fit and proper person and
- enable eligible grants to be paid earlier.

Background

The EMDG scheme aims to support small to medium sized businesses to break into export markets by reimbursing up to 50 per cent of the expenses relating to export promotion above a $10,000 threshold.\(^2\) The scheme was established in 1974 and is administered by Austrade.\(^3\)

In 2012–13 close to 2,800 exporters received assistance through the EMDG scheme. The total value of the grants for that period was $120.4 million.\(^4\) Currently the exporters who utilise the EMDG scheme the most are those in the services industries, followed by manufacturing and primary industries.\(^5\) The top six countries targeted by EMDG recipients have in recent years been the USA, UK, China, Singapore, Germany and Canada.\(^6\)

Who is eligible to get the EMDG?

Grants are available to businesses that have:

- income of $50 million or less for the year\(^7\)
- spent a minimum of $20,000 on eligible export promotion activities in the previous financial year (new applicants are allowed to combine two years’ worth of expenses)\(^8\) and
- have principal status for the export business.\(^9\)

In addition, to be eligible a business has to be engaged in developing export markets for Australian goods, services, intellectual property, trademarks or know-how.\(^10\) In particular, eligible goods and services include:

- goods made in Australia
- goods not made in Australia but where Australia will gain from their sale overseas
- tourism services including accommodation, passenger transport and tours\(^11\) and
- conferences and events held in Australia.\(^12\)

---

3. The scheme was established by the Export Market Development Grants Act 1974 (Cth).
5. Ibid., p. 75
6. Ibid., p. 76.
10. Ibid.
11. Exemptions include services relating to migration to Australia and the purchase of assets in Australia including real estate and shares. Austrade, ‘Who can apply for EMDG?’, op. cit.
12. Ibid.
Key changes to the EMDG scheme

The scheme has been amended a number of times, mainly in response to reviews of its effectiveness. The most significant changes include the following:

- in 1988, New Zealand was no longer considered an eligible export market because the two markets were considered to be too similar.
- in 1991, the percentage of export expenses businesses could claim back was reduced from 70 per cent to 50 per cent.
- in 1997, the total amount in grants paid within a year was capped to around $150 million.
- in 2003, the focus of the scheme shifted towards small to medium sized exporters.
- in 2008, the total amount available under the scheme increased by $50 million to $200 million a year.
- in 2010, when funding available under the scheme was brought back to just over $150 million a year.
- in 2012, when the funding available under the scheme was reduced to $125.4 million a year.
- in 2013, when the funding available under the scheme was increased by $50 million over four years.

Export Market Development Grants Amendment Bill 2013

In 2013, the former Government introduced the Export Market Development Grants Amendment Bill 2013 with the purpose of:

- increasing the maximum number of grants able to be received by exporters targeting markets in East Asia and other emerging regions from seven to eight
- reducing the number of grants available to exporters targeting established markets including the USA, Canada and the European Union
- removing the administrative expenditure limit from the legislation and instead giving authority to the Minister to specify the percentage of the yearly appropriation that may be expended on administration
- extending the application of the ‘fit and proper person’ rule
- preventing the further approval of joint ventures after 30 June 2013 and
- making event promoters ineligible for a grant.

At the time the Bill attracted some criticism, in particular around the issue of re-targeting the grants towards the Asian region, with major interest groups like the Australian Chamber of Commerce and Industry quoted as arguing that there is ‘no credible commercial analysis provided that shows that the EMDG money spent on established markets is any less valuable than that spent in emerging markets’. Another criticism of the Bill was...
in relation to making event promoters ineligible for grants. The Association of Australian Convention Bureaux argued that the removal of event promoters\(^{25}\) from the EMDG scheme would ‘have significant impact resulting in fewer international delegates for Australia and therefore reduced export revenue.’\(^{26}\) As the Bill lapsed at the end of last Parliament, the proposed changes to the scheme were not made.\(^{27}\)

**Mortimer Review**

In general, the reviews of the EMDG scheme have found that the program operates successfully and encourages small to medium sized businesses to export.\(^{28}\) The latest review of the scheme was conducted in 2008 by David Mortimer AO. His recommendations were:

- continue the EMDG scheme as a capped program, with either the cap adjusted to match demand against current eligibility criteria or eligibility adjusted to meet the current cap. The capped funding scheme should be indexed annually to preserve the real value of the funding.
- tighten the scheme provisions by reducing the number of grants from eight to five and increasing the minimum threshold to $30,000.
- implement changes to provisions of the EMDG scheme and eligibility criteria to the extent possible to reflect the contemporary needs of Australian businesses growing internationally and
- review the effectiveness of the EMDG scheme at regular intervals (but not more frequently than every five years).\(^{29}\)

**Committee consideration**

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing this Bills Digest the Bill had not been considered by the Senate Standing Committee for the Scrutiny of Bills.

**Parliamentary Joint Committee on Human Rights**

At the time of writing this Bills Digest the Bill had not been considered by the Parliamentary Joint Committee on Human Rights.

**Rationale for the Bill**

The reason for the changes introduced by the Bill would appear to be the Government’s commitment to its pre-election policy announcement to restore funding to the EMDG scheme to assist Australia’s manufacturing exports, especially for manufacturers who specialise in unique and high value manufacturing operations.\(^{30}\)

**Policy position of non-government parties/independents**

At the time of writing this Bills Digest the Bill had not been debated in Parliament and no statements made by non-Government members of Parliament could be found. Given the long history of the EMDG scheme and the support it attracts from all sides of politics, it is likely that the Bill will not be opposed.

---

25. Figures obtained by the Parliamentary Library from Austrade show that in 2011–12 the number of grants paid to applicants identifying themselves as event promoters was no more than six.
28. However, the Productivity Commission, when reviewing the evidence of the effectiveness of the EMDG, stated that ‘concerns have been raised repeatedly about the methodology for assessing EMDG additionality, with alternative calculations suggesting substantially lower inducement…’, Productivity Commission, *Trade and assistance review 2007–08*, op. cit., p. 30.
Position of major interest groups

**Australian Chamber of Commerce and Industry (ACCI)**
The Australian Chamber of Commerce and Industry (ACCI) has welcomed the Bill, arguing that the associated increase in funding will ‘directly assist companies to secure more commercial contracts, underpin their viability and ultimately provide more jobs and investment to our economy’.  

**The Winemakers Federation of Australia (WFA)**
The Chief Executive of the Winemakers Federation of Australia (WFA), Paul Evans, has expressed his support for the Bill and stated that the EMDG grants ‘have been very important for our small and medium winemakers to enter new export markets and become self-sustaining exporters’.

**Australian Tourism Export Council (ATEC)**
The Australian Tourism Export Council (ATEC) also welcomed the Government’s announcement, arguing that the changes introduced by the Bill ‘will help support investment by tourism businesses to grow new markets and attract more international visitors, which in turn grows the value of tourism exports for Australia’.

Financial implications
According to the Explanatory Memorandum:

Expenditure under the Act is set through annual Appropriation acts. A capping mechanism ensures that expenditure under the scheme is limited to the amount appropriated.

The Government’s intention to increase the funding available to the EMDG scheme from $125 million to $175 million over four years was announced in the 2013–14 *Mid-Year Economic and Fiscal Outlook*.

Statement of Compatibility with Human Rights
As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

Key issues and provisions

**Item 1** removes the Reader’s guide to the Act, including the list of definitions found in Part 9, to simplify the legislation and avoid duplication (for example, there is no need to list defined terms in the Reader’s guide, as they are set out in full in the body of the Act).

**Item 2** amends paragraphs 7(1)(c) and 7(4)(b) of the Act to substitute the number 7 with 8. This proposed amendment would increase the maximum number of grants that an eligible business can receive from seven to eight.

**Item 3** amends paragraph 29(d) to substitute the amount $20,000 with $15,000. This proposed amendment decreases the minimum expenses that are required to be incurred by an applicant to qualify for a grant from $20,000 to $15,000.

**Item 4** amends subsection 63(1) of the Act to substitute the amount of $5,000 with $2,500. This proposed amendment decreases the maximum amount to be deducted from an applicant’s provisional grant from $5,000 to $2,500.

---

35. J Hockey (Treasurer) and M Cormann (Minister for Finance), *Mid-year economic and fiscal Outlook 2013–14*, op. cit., p. 149.
36. The Statement of Compatibility is at page 1 of the Explanatory Memorandum to the Bill, op. cit.
Extension of fit and proper person test

Section 87AA of the Act provides that a grant is not payable if the CEO of Austrade forms the opinion that the applicant for the grant, or an associate of the applicant, is not a ‘fit and proper person to receive a grant’. Paragraph 101(1)(bb) of the Act requires the Minister to determine, by legislative instrument, guidelines for determining who is an ‘associate’ of an applicant and whether a person, or their associate, is a fit and proper person to receive a grant. The relevant guidelines are the Export Market Development Grants (Associate and Fit and Proper Person) Guidelines 2004. 37

Some applicants for an EMDG grant may be assisted by an ‘export market development grants consultant’, which is defined at section 107 of the Act as ‘a person who asks for, or receives, any fee for any work relating to the preparation of an application for a grant’. Under the current Act, such consultants are not subject to the ‘fit and proper person’ test.

Item 6 inserts sections 79A to 79E into the Act, which will allow the Chief Executive Officer (CEO) of Austrade to determine that an EMDG consultant, or an associate of the consultant, is an ‘excluded consultant’ (a definition of this term is inserted into subsection 107(1) of the Act by item 10 of the Bill). This determination will only be able to be made where the CEO forms an opinion that the consultant, or his or her associate, is not a fit and proper person. The CEO’s determination must be made in accordance with guidelines issued by the Minister under proposed paragraph 101(1)(baa) of the Act, inserted by item 9 of the Bill. According to the Explanatory Memorandum, it is expected that these guidelines will be based on the current Export Market Development Grants (Associate and Fit and Proper Person) Guidelines 2004, made under paragraph 101(1)(bb) of the Act. 38

A similar amendment, extending a ‘fit and proper person’ test to EMDG consultants was proposed in the previous Government’s Export Market Development Grants Amendment Bill 2013. 39 The Parliamentary Joint Committee on Human Rights expressed concern with a number of aspects of the proposal, including the lack of information on the content of the guidelines to be made by the Minister and applied by the CEO in determining whether a consultant was a fit and proper person, and the proposal’s potential impact on aspects of the right to be free from arbitrary interference with privacy and reputation. 40 Similar concerns may be raised in relation to the current Bill.

Changes to payment arrangements

As explained above, the annual funding that is provided under the EMDG scheme is capped. What this means is that if approved applicants would otherwise be entitled, in total, to grants that exceeded the level of the cap, the amount that is paid to each grant applicant would be adjusted on a pro-rata basis to ensure that the funding cap was not exceeded. 41 The payment arrangements are set out at section 67 of the Act. Very basically, if the amount that a grant applicant is entitled to does not exceed the ‘initial payment ceiling amount’ (IPCA) 42 for that year, they will be paid the full amount. However, if the amount to which the applicant would be entitled exceeds the IPCA, they will be provided with an initial payment equal to the IPCA and then another payment after the total value of all applicants’ entitlements has been assessed. The second payment is made in accordance with section 82 of the Act. Item 7 amends section 82 to allow the further payment to be made as soon as the quantum of that payment is determined. This means that in years where the total entitlements of all approved applicants is well below the capped amount, and therefore all applicants will be able to be paid their full entitlement, payment may be made without delay.

Concluding comments

Overall the changes proposed in this Bill are not controversial. The proposed changes regarding the extension of the fit and proper person rules are similar to those proposed by the former Government and may attract similar criticism to that raised by the Parliamentary Joint Committee on Human Rights in relation to the potential

---

42. This amount is determined by the Minister under section 68 of the Act.
breach of a person’s right to ‘be free from unlawful or arbitrary interference with one’s privacy and reputation’. 43

As far as the policy is concerned, whilst it is generally accepted that the promotion of exports has a positive effect on the economy, the degree to which this scheme encourages increased export activity, and the public benefits it provides, may be overstated and ‘appear optimistic’. 44 Referring to the claim often cited by Australia’s policy makers that ‘each dollar of EMDG generates some $13.50 to $27 of exports’, 45 made by the Mortimer Review, the Productivity Commission noted that:

This would appear an implausibly large response given that export promotional expenses comprise about 5 per cent of total exports costs and the EMDG scheme only partially reimburses these expenses. 46

43. Parliamentary Joint Committee on Human Rights, Third report of 2013, op. cit.
44. Productivity Commission, Trade and assistance review 2007–08, op. cit., p. 31.