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Dear Kelly

Draft EMDG Rules 2020 – Submission Mitchell and Co

Thank you for the opportunity to lodge a submission to the proposed EMDG rules.

I have some real concerns and do not think the rules cannot be finalized as they now stand.

More work needs to be done. As a member of ECAI (Export Consultants Association Inc) I therefore look forward to our discussions for January 14th as an opportunity to address my and my peers concerns at that time.

I give feedback as follows: -

Over reliance on guidelines - not rules to explain things

Like the Act itself, it hard to pinpoint things within the rules with any great accuracy.

For the Act, it was *“trust us things will be explained in the rules”*.

Now we have the rules, it is *“trust us things will be explained in the guidelines”*.

To me the rules cannot be finalized with any certainty until the guidelines are as well.

For example, the rules simply state – *“from time to time”* – the Minister will call for an application. We are not told when that will be if at all. The assumption is that the guidelines will tell us.

The rules are silent in terms of the acquittal of export expenses – that is there is no section 58 as in the old act, one could argue that an applicant will only now have to show they have incurred the expenses, not paid for them. A “payment reference” must be included in the rules, not the guidelines to prevent confusion and misunderstanding here.

The Act and rules do not stand alone, as they should, to record the legislative intent of what the legislation is trying to achieve. I think there is too much reliance in the guidelines (yet unknown) as how the legislation will work in practice.

I have no problem with guidelines that deal with *“How to lodge an application”* not interpretive one *“How to interpret the Act – what the Act really means”*.

Good legislation means that such interpretative guidelines/examples (like the beef Jerky) are not required.

As already known to Austrade as well, guidelines are just that, they are just one’s view and have no legal status.

The rules do not align with the EMDG review 2020 – the Anna Fisher report

It seems to me that some of the intent of the Anna Fisher report has now been abandoned, in that

1. The exporter journey no longer exists – you can skip Tiers it seems on a whim.
2. Exporter education has been abandoned; we have now been told you do not need a written plan to support your application.
3. New Markets is not country specific as stated in the report – you now need to show *“strategic shift”* – whatever that means.

I refer to: -

Rule 5 Definition of *ready to export*, A person is export ready to export eligible products if

Clause (a) ... “has not previously exported”

It will be a very hard sell to tell a potential client of the scheme, that because have already export sales, you are defined as not being *“export ready”*, this is a bit of bureaucratic gobbledygook in my mind. Export sales are clear evidence of export readiness in the real world.

Clause (b) ... “has a plan to market”

This needs to be changed to a *“written plan”* to be consistent with the Anna Fisher report.

Clause (c) ... (i) “by a declaration by the person that they have used Austrade’s export readiness tool”

In terms of support to one's marketing effort, having to use the Austrade "Export Readiness" tool is a non-event. It is out of date, it has a reference to being developed in 2012¹, it is simply a set of "affirmations" that anyone and everyone will tick off to get a grant payment.

This reference should therefore be removed from the rules.

Clause (c) ... (iii) "by the person having competed export readiness training"

Clause 5 (ii) This rule should have the addition – that the training must be a body that has RTO status by a Registered Training Organization, not to do so devalues the strategic intent and findings of the Review report.

If Tier 3 access is now country specific – but based on "strategic shift, then what this means should clearly be defined in the rules, not in the guidelines. This will prevent confusion and a difference between what a client thinks, and an Austrade assessment officer may think a sometime in the future.

How will success of the New Act be measured - the rules are silent on this – will they have WTO impact.

With no performance measurement in rules/scheme, how will success be measured to government over future years is a question

Key Performance Indicators for an exporter to gain access to the program over the various Tiers other than just getting pre-approval to spend money are not mentioned in the rules at all. I think they need to be determined and included.

I also think the lack of any performance measure (sales results) is one that will cause complications, the Minister will need to tread very carefully here given the geo-political struggle between China and Australia we are now facing, which means Australian government support to exporters are very much in the firing line or at least under the microscope.

I understand from the press, that Australia has now acted against the China via the World Trade Organization (WTO), fine but in doing so, the old adage "*people in glass houses should not throw stones*", applies here to the new EMDG Act.

I explain.

The Chinese Ministry of Commerce (MOFCOM) submission on imports of Australian Wine, lists EMDG (old Act) as one the Australia government-based assistance schemes that are a "subsidy" and hence used as

¹ <https://www.austrade.gov.au/Australian/Export/Guide-to-exporting/International-Readiness-Indicator>

justification for the recent imposition of the huge and unfair tariff increases to many of my clients in the wine sector.

In past action brought by other countries against the EMDG program (twice - US and I think Canada)² it was held the program was not a subsidy as it was non-market selective and not open access to all and that it was directed to towards an end objective – export sales.

The old export performance test – was a real and strong defence that EMDG was not a free subsidy, that combined with reimbursement of non-sales related expenditure was properly defined “incentive – not subsidy” for Australian companies to seek out new overseas markets, to get sales, to create jobs, not just help them sell things overseas cheaply, below the cost of production that is now alleged by China.

With no such sale measurement in the rules, it means any case in the WTO, Australia may bring for Barley/Wine/Timber etc. will have chances of success reduced dramatically in my mind. Your call not mine.

What are the GST implications to exporters? – the rules are silent on this

The new rules do not state if any grant advance will be subject to GST or not.

Unlike the old scheme I do think that the new grant agreements will attract GST.

I have history here; I obtained the GST clearance for the old scheme in 1997 when I worked for Austrade myself.

Things are now different. Other similar grants like the new EMDG at both a Federal and State level require an invoice to be raised by the applicant, with GST added to the funding amount.

There is no real impact to an applicant/exporter, the GST is simply reported upon.

It does impact Austrade as the payer. Funding for the GST impost will have to be sourced from somewhere.

It is unclear (not in the rules) if the budget appropriation will be increased to take this into account or if not, exports will be shortchanged 1/11th of the EMDG funding pool due to no fault of their own.

Concerns with the application process – not mentioned in the rules themselves

My main concerns with the rules are by omission, that is things are not disclosed, but mentioned in the flyer³ to the rules (a glimpse of the guidelines) and as advised as the Austrade presentation to the ECAI board on 7th December.

² ECAI and I can provide more background to the cases if required – one was Howe Leather – late 1990s

³ Quick Reference Guide – What do the new EMDG Rules mean for me?

My major issues being: -

1. The lodgment timetable is unknown.
2. The small lodgment window – 4-6 weeks is simply unworkable, unfair and inequitable.
3. The grant reimbursement rate is not known on lodgment.
4. Ambit claims will be made – claim quality will decrease, and fraud risk increased.
5. No modelling has been done on estimated demand for the new scheme.
6. Your grant age in the new scheme will not be able to be determined until your 2020/2021 application is submitted and paid – could be post March 2022 – the old lodgment cycle.
7. Two schemes to be paid for the current level of funding in 2021/2022.
8. Two schemes – Two sets of lodgment cycles, dates rates will cause a lot of confusion.
9. Austrade's processing KPI's are unknown.
10. The role of EMDG lodgment agent is not stated.

Uncertainty for exporters will increase not decrease as transition from the old to the new Act, of course, things will be better second year around. It is a learning curve for all, I am not sure that I will still be in business by then.

Consider the following questions that could be posed to Minister Tehan now to answer:-

1. **Are exporters better off under the old scheme or not?**
2. **Will exporter have greater uncertainty under the scheme or not?**
3. **Do you expect application numbers to rise or fall from the old scheme to the new one?**

The answer is **"No"** to all of the above questions, on the following factual reasonings: -

- Exporters will be moving from a scheme (albeit in arrears) that gave them a 5-8 month window of opportunity to lodge, with an incentive to control uncertainty as to timing of payment, by lodging early and know payment rate subject the settlement of the first tranche installment.
- The grant reimbursement rate was set at 50%. It is now not disclosed to exporters upon lodgment, with two schemes being paid in 2021/2022 it could be very low – say 20%, who knows?
- Under the old scheme the funding was very much “dollar for dollar” – now you may have to spend 3-5 times on your own account to the what the government proposes to fund, you are simply worse off than before.
- Only a percentage (small for 2020 GY applications >\$100K), having uncertainty as to their final payment. Now all exporters will have their grant entitlement reduced
- Under the new rules, the lodgment widow (4-6 weeks) is now about 25% of what it was before.
- If you miss out, you must now wait another year to apply again, unlike the catch all for Year 1 applicants to include 2 years expenditure in their first application there is no such safety net for such exporters.
- If you missed lodging an application, say using a consultant by Feb, you could then apply 4 months later, not 12 months, so the wait to do so is 3 times what it was before.
- If you lodge early it will make no difference, as you must wait for all others to submit as well.
- You must get approval before you start spending, you must wait for the application to be processed first by Austrade, expenditure in a financial year before that cannot be included.
- If you lodge a 2020/2021 application (under the old Act) your status for 2021/2022 is unclear, until such your application is lodged, assessed and paid, this could be months done the track.
- You do not know when you will be paid until you apply again, the process only means pre-approval only.

Therefore, the answers are

- 1. Exporters are not better off under the new process/lodgment arrangements in terms of timing and payment rate.**
- 2. Uncertainty will increase not decrease.**
- 3. No modelling has been undertaken, so numbers are not known.**

Concern with statements made in Parliament – Additional level of uncertainty – post grant approval/agreement being executed

I refer the second reading of the Bill by Dan Tehan MP⁴

“Mirroring Commonwealth grant agreements, the bill allows adjustments to be made to grant agreements should the amount appropriated for the EMDG program be reduced”

So uncertainly exists for an exporter, even after a grant agreement is made and executed by both parties.

This is complete at odds to advice that former Minister Birmingham made to the ECAI board some weeks back.

If this is the case, then the rules should state it upfront, not for exporters to read it as fine print in the grant agreement or fine out up to 2-3 years post grant approval lodgement.

I hope of course that the comments made are not correct.

Proposed solution to decrease uncertainly for 2021/2022 Applications.

The small window of time allowed to submit feedback on the rules means there is not a lot of time to think of answers to help fix the issues now raised by myself and others.

As a member of ECAI I am very grateful that the joint ECAI/Austrade session is planned to deal with my concerns and that of our membership on Jan 14th. I am hopeful a lot of things can be sorted out at that time.

I support the ECAI list of possible solutions/discussion points. I now make my own.

To me there is a simple means to decrease completely the problems identified with the proposed current arrangements: -

- The Austrade model projected lodgments for 2021/2022 to determine a base demand and the need for additional appropriation or not.
- Such increased funding be declared in the 2021 budget deliberations.
- **The Minister declare the 2021/2022 reimbursement rate at 50% (even 45% or so) on July 1, 2021, at the start of the year, not sometime afterwards.**

⁴ Hansard – First reading 7th October and the same for the second reading December 8th

- It will mean EMDG is consistent with all other grant schemes – ***you now know the reimbursement rate on lodgment.***
- ***The need to have a such a short lodgment timeframe for applications is negated.***
- Clients will be able to prepare better grant bids with greater accuracy, to give better information to Austrade.
- If you lodge early, you will be processed quickly, as currently is the case.
- Self-prepared applicants could lodge up until Sept 30th and using an agent up to Nov 30th.
- Clients would have the flexibility to outsource the lodgment function should they wish.
- They have therefore two lodgment dates not just one, to help those that miss out in the first instance, this would help reduce strain on Austrade’s lodgment system, workflow and processing.
- I, as well as my peers, can continue to add value to the EMDG process as we have done and demonstrated (QIP results) in the past. We continue help clients an exporters and Austrade do it job as well.
- The funding announcement could be a one off for 2021/2022 – COVID response and for the year of transition from the old to the new arrangements – the Ministers call in the future.

Exporters would have greater certainty and access to the program.

I will be able continue to help exporters as I love doing. Better quality applications will be received by Austrade.

“Yes, exporters are better off now under the new EMDG – pre-approval, certainty of payment rate, greater opportunity to access the program”

is the answer any Minister can give with 100% certainty when asked?

Stuart Mitchell

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Mitchell and Co 18/12/2020