THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADEX SCHEME AMENDMENT BILL 2010

EXPLANATORY MEMORANDUM

(Circulated by authority of the Senator the Hon Kim Carr, Minister for Innovation, Industry, Science and Research)
TRADEX SCHEME AMENDMENT BILL 2010

OUTLINE

Introduced in 2000, the objective of the Tradex Scheme is to allow for the importation of goods, without payment of customs duty or other taxes, provided the goods are subsequently exported, or incorporated into other goods that are exported.

The Tradex Scheme Amendment Bill 2010 (the Bill) would amend the Tradex Scheme Act 1999 (the Act) to clarify the eligibility of partnerships and remove redundant provisions.

Currently the Act requires an applicant for the Tradex Scheme to be a ‘legal’ person who proposes to import goods. The Acts Interpretation Act 1901 provides that a person generally includes a body politic or corporate as well as an individual. While a partnership is a relationship recognized by the law, it is an unincorporated body. The status of partnerships under the Tradex Scheme is therefore unclear.

While partnerships are not explicitly referenced in the legislation, they were not, and are not, intended to be excluded from the Tradex Scheme. This Bill seeks to clarify this position in law.

The Bill also contains a minor amendment aimed at removing redundant provisions of the Act consistent with the Government’s objective of reducing the regulatory burden.

FINANCIAL IMPACT STATEMENT

The proposed amendments are expected to have no significant impact on revenue. The changes would simply clarify the status of partnerships under the Tradex Scheme and remove redundant provisions.
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NOTES ON CLAUSES

Clause 1 – Short Title

1. This clause provides that the short title by which the Act may be cited is the Tradex Scheme Amendment Act 2010.

Clause 2 – Commencement

2. Subclause (1) provides that the commencement date for sections 1, 2 and 3, and anything in this Act not elsewhere covered by the table, is the day on which this Act receives Royal Assent. The date of commencement for amendments to the Tradex Scheme Amendment Act 2010 contained in Schedule 1 of the Act is a single day fixed by proclamation. However, if any of these provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.

Clause 3 – Schedule(s)

Schedule 1

Part 1 – Partnerships Amendments to Tradex Scheme Act 1999

3. This Schedule clarifies the eligibility of partnerships for Tradex.

Item 1

This item would ensure that the ineligibility provisions with respect to applying for, or holding a tradex order, which apply to a person who is insolvent under administration or an externally administered body corporate, would apply to partnerships as well. This would ensure consistent treatment of partnerships and individuals or corporate bodies with respect to ineligibility. The item provides that, if any of the partners is an insolvent under administration, or an externally-administered body corporate, the partnership is ineligible to apply for, or to hold a tradex order.

Item 2

4. This item would make it clear that the definition of a person for the purpose of the Tradex Scheme includes an individual, body corporate or a partnership. This would ensure that partnerships are treated consistently with other eligible entities under the Tradex Scheme.

Item 3

5. This item would ensure that disqualification provisions relating to the provision of false or misleading information not only apply to individuals and corporate bodies but also extend to partnerships. It would apply to partnerships if any of the partners knew, or ought to have known, about the false or misleading material.
Item 4

6. This item would clarify the continuity of partnerships for the purpose of the Tradex Scheme. It would ensure that changes in the composition of a partnership would not affect the continuity of the partnership for the purposes of the Tradex Scheme. This would simplify the regulatory burden on partnership members by not requiring them to reapply every time there is a change in the make up of the partnership.

Item 5

9. This item would ensure that, with respect to the making of a Tradex Order, the requirement that the Secretary be satisfied that no false or misleading material was provided knowingly in the application by the applicant, extends to partnerships as well as individuals and corporate bodies. With respect to partnerships, the Secretary would need to be satisfied that none of the partners provided false or misleading information.

Item 6

10. This item would ensure that the requirement for a statement to be added to the Tradex Register when a tradex order holder has ceased to exist applies equally to individuals, corporate bodies and partnerships.

Item 7

11. This item outlines how partnerships would be treated for specific purposes within the Act. Generally, a partnership would be treated as if it were a person. However, this item sets out additional provisions that would apply. It makes it clear that:

(i) an obligation imposed by the Act may be discharged by any of the partners;
(ii) if a notice or other document is given to any partner for the purposes of the Act, it is taken to have been given to the partnership;
(iii) the partners are jointly and severally liable for any amount payable by the partnership under the Act; and
(iv) any offence committed by the partnership is taken to have been committed by each partner, except where the partner has no knowledge of the circumstances of the offence, or knew of the circumstances, but took all reasonable steps to correct the contravention. This would ensure innocent partners would not be made guilty of an offence of which they have no knowledge.

Item 8

12. This item outlines the proposed transition to the amended Act. It provides that changes to the Act do not have an impact on applications received or tradex orders made before those changes have effect.
Part 2 – Repeal of spent provisions

Item 9

13. This item would repeal spent provisions that relate to the transition arrangements between the Texco Scheme and the Tradex Scheme when it was introduced in 2000. Texco was the forerunner to and was superseded by the Tradex Scheme. This provision outlines the process for converting Texco customers to Tradex Scheme customers. No Texco customers currently exist and there is no longer any need for this provision. Removing this transition provision would be consistent with the Government’s objective of reducing regulation.