

Bills Digest
No. 46 2000–01

ACIS Administration Amendment Bill 2000

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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ACIS Administration Amendment Bill 2000

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ACIS Administration Amendment Bill 2000

Date Introduced: 6 September 2000

House: Senate

Portfolio: Industry, Science and Resources

Commencement: On Royal Assent.

Purpose

To amend the *ACIS Administration Act 1999* in particular by extending the regulation making power under that Act.

Background

Overview

The Automobile Competitiveness and Investment Scheme (ACIS) will be the largest industry-specific assistance to industry program provided by the Commonwealth. It will operate for five years from 1 January 2001. It will provide assistance, in the form of import duty credits, to producers of motor vehicles, components and automotive services for both domestic and export markets. Assistance will be capped at \$2 billion over the five year program.

Participants will be eligible to earn import credits on the basis of:

- their production of motor vehicles, engines or engine components (motor vehicle producers only), and
- their investment in certain plant and equipment and research and development.

The Government has stressed that ACIS is to provide *transitional* assistance over the next five years. The tariff on passenger motor vehicles and certain parts will be reduced from 15 to 10 per cent on 1 January 2005.

The purpose of ACIS is to encourage competitive investment and innovation in the Australian motor industry in order to achieve sustainable growth. The industry Minister

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noted that ACIS has been designed to reward innovative companies that are prepared to back Australia by investing in its future.

Proposed Amendments

The *ACIS Administration Act 1999* (the Act) was assented to less than a year ago (3 November 1999). The proposed amendments in the current Bill are described by Senator Ian Campbell in his Second Reading Speech as minor amendments to enable the efficient delivery of the program and to reduce the administrative burden on both participants and the Government.¹

The proposed main changes are directed at achieving:

- a tighter definition of 'approved plant and equipment' and 'approved research and development' for use in identifying which expenditures will be eligible for the assistance benefit
- clarification of the methods for calculating investment, including the use of assistance loadings to cover the incidental costs of investment which are difficult to quantify, and
- protection from 'artificial' companies set up to take advantage of ACIS, that are not going to contribute to the sustainable growth of the Australian automotive industry.

Main Provisions

Schedule 1 Part 1 inserts new definitions of 'allowable', 'approved plant and equipment' and 'approved research and development' in **proposed new section 6A** of the Act. Under the proposed section, there are two aspects to approved plant and equipment or approved research and development. These are, first, it must be allowable plant and equipment or research and development, and second, the allowable plant and equipment or research and development is only allowed to a given value – the maximum claimable value in respect of that plant and equipment or research and development. What is 'allowable' is to be declared by future regulations. So too is 'maximum claimable value' for each kind of allowable plant and equipment or research and development. This value is to be worked out using a particular method to be set out in regulations, or stated in the regulations in respect of that kind of allowable plant and equipment or research and development.

'Participant' is defined in section 6 of the Act as a person² or group who is registered as a motor vehicle producer (MVP), automotive component producer (ACP), automotive machine tool or tooling producer (AMTP), or automotive service provider (ASP). **Proposed section 6B** provides that if approved plant and equipment is sold by a participant or the participant ceases to control the plant and equipment, then it ceases to be approved. According to the note to **proposed section 6B** when plant or equipment ceases to be approved plant or equipment under that section then 'investment undertaken' in that

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plant and equipment ceases to be relevant as type A, B, D, F or H investment. Types A, B, D, F, and H investments are defined under the Act as investments by MVPs, ACPs, AMTPs and ASPs relating to their approved plant and equipment.

Proposed new paragraph 6(5) allows regulations to be made which will state at what point of time and in what circumstances, when investment undertaken by a participant is taken to have occurred. **Proposed new section 6C** will give the Secretary the ability in 'limited circumstances' to treat certain investments by one person as eligible investments³ undertaken by another person who is a participant. The first person ('the original investor') may or may not be a participant. Whether or not the Secretary can make a determination will depend on the relationship between the original investor and the participant. Under **proposed new subsection 6C(2)** the Minister may make guidelines setting out the circumstances in which the relationship between two persons are such circumstances. These guidelines are disallowable instruments (**proposed new subsection 6C(7)**).

The Secretary is required to examine the circumstances and may make a determination once he or she is satisfied that the circumstances fall within the Ministerial guidelines (**proposed new subsection 6C(3)**). Only after making this determination can the Secretary make a determination under **proposed new subsections 6C(4)** and **(5)**. The first of these proposed subsections relates to a determination when the original investor is a participant at the time of the investment, and the second proposed subsection relates to when the original investor was not a participant at the time of the investment. In this latter case, if the Secretary is satisfied that if the investment had been undertaken by a participant, the investment would be eligible and it is reasonable in the circumstances to allow the investment to be treated as eligible, then the Secretary may make a determination in writing to that effect. **Proposed new subsection 6C(6)** also gives the Minister power to make guidelines as to what can be taken into account by the Secretary for the purposes of proposed new subsections 6C(4) and (5). Guidelines issued under **proposed new subsection 6C(6)** are disallowable instruments.

Item 22 repeals existing sections 14 and 15 and inserts **proposed new sections 14, 14A, 14B** and **15**. **Proposed new subsection 14(1)** simplifies the existing provisions requiring that a person may only have one current registration under ACIS. As long as a participant is registered individually, a group of related bodies corporate,⁴ of which the participant is a member, cannot be registered (**proposed new section 14(2)**). Similarly, if a group of related bodies corporate is a registered participant, then a member of that group cannot be registered individually (**proposed subsection 14(3)**). **Proposed new section 15** provides that a person's existing ACIS registration will be cancelled if a subsequent registration application is approved by the Secretary. This strengthens subclause 14(1).

Section 26 of the Principal Act allows for registration as a participant under ACIS if the Secretary is satisfied as to form and eligibility, and that the applicant or company is a fit and proper person. Eligibility criteria are found in sections 16, 17, 18 and 19 of the Act for MVP, ACP, AMTP and ASP applicants respectively. These criteria relate principally to production in Australia measured by period of time, quantity, value or quantum. **Proposed**

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new section 14A will additionally require the Secretary to be satisfied that the registration would further the purpose of the Act set out in section 3⁵. The Explanatory Memorandum advises that the effect of the clause allows the Secretary to prevent the registration of a company set up artificially for the purposes of ACIS that will not contribute to the sustainable growth of the automotive industry.⁶

Item 25 effects a related amendment by inserting **proposed new paragraph 26(2)(g)** requiring the Secretary to be satisfied that a registration would, as required by new section 14(A), further the purpose of the Act.

Section 110 of the Act sets out when the Secretary can deregister a participant. One ground is that the participant has ceased to be a fit and proper person. Other grounds include if the Secretary determines that a participant cannot meet the requirements referred to in sections 16-19 as to quantum, quality and value of production in Australia. **Item 46** adds **new paragraph 110(5)(c)** to allow the Secretary to deregister a participant if he or she determines that the registration does not further the purpose of the Act.

The Minister may make guidelines for the Secretary to take into account when making a determination to register or deregister an applicant under the proposed provisions (**proposed new section 14B**). These guidelines are disallowable instruments.

Items 27 and **28** add convictions against the law of a foreign country as additional ground for failing to be a fit and proper person for the purposes of the Act. There is no time limit on when such offences were committed.

Items 31-34, and **36** repeal provisions of the Act which require first quarterly returns, as this information will be collected from the business plan submitted with an application. Existing subsection 23(3) which requires the inclusion of a business plan, is amended by **item 24** to enable business plans to contain information from 1 January 1999. **Items 37-43** enable the Secretary to calculate benefits immediately rather than at the end of 45 days following each quarter.

Participants are required under section 35 of the Act to lodge quarterly returns. The proposed amendments in **Item 44** repeal and substitute **new subsections 109(2), (3) and (4)** so that updates of business plans will be provided with each third quarter return, rather than before 31 October each year. Further, **item 45** amends subsection 110(4) by deleting a reference to the period of 6 months, so that in the event that a participant fails to lodge an updated business plan, as required by section 109, the Secretary can deregister the participant.

Proposed new paragraphs 111(aa), (ab), (ac) and (ad) extend the jurisdiction of the Administrative Appeals Tribunal to decisions by the Secretary under **new section 6C**.

Part 2, items 48-62, makes amendments throughout the Act as a consequence of the deletion of the word 'machine' from the expression 'automotive machine tooling'.

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Existing ACIS Administration regulations

The ACIS Administration Regulations 2000⁷ commenced on 1 September 2000.⁸ The Regulations define key statutory expressions and specify the processes that must be followed to obtain ACIS benefits.

These regulations relate mainly to definitions under section 6 of the Act and describe the kinds of plant and equipment and research and development which will be approved under ACIS. On the repeal of section 6 of the Act when this Bill passes the normal effect would be that the regulations relying on section 6 would also be repealed.

It is clear that a key objective of the proposed amendments is to allow for the formulation of regulations that will allow the administrators of ACIS to exercise control over not only the kind but also the level of expenditure on plant and equipment and research and development that is allowable. This will be possible by specifying in regulations under the amended Act the **maximum claimable value** of allowable plant and equipment and allowable research and development.

Concluding Comments

A major concern with this type of assistance package is its administrative complexity. The Government has noted that ACIS will involve higher administrative costs to Government and higher compliance costs to industry than the existing motor vehicle assistance arrangements.

The Scheme needs to be delivered through an administrative framework which:

- clearly identifies which investments and innovations will be eligible for investment,
- ensures the cap on the cost of ACIS is achieved,
- minimises the administrative burden on both participants and the Government, and
- is sufficiently transparent to allow proper accountability.

This is a tough order as there is clearly potential for conflict between the achievement of each of the above four objectives.

Most of the proposed amendments relate to the regulations that can be used under the legislation to define and quantify which expenditures will be eligible for inclusion in the calculation of benefits under ACIS. The proposed changes will increase the powers of the regulator to control the distribution of benefits from the Scheme. In particular, with respect to what is approved plant and equipment and what is approved research and development, the amendments expand the scope of the regulations to specify not only which items are

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allowable but also the maximum claimable value in respect of allowable plant and equipment or research and development.

The proposed expansion of the regulatory powers would appear to be of clear benefit to the regulator in that it provides scope for greater control over the cost of the program and for the prevention of potential abuse. The Minister notes in his Second Reading Speech that the changes will assist participants to determine what is and is not eligible expenditure—this is an important aspect.⁹ The Minister's further claim that the amendments will streamline the operation of the scheme and reduce the administrative burden on both participants and the Government appears more open to challenge.¹⁰ Increased regulation can often have the opposite effect and add to administrative burden. The outcome will depend on the skill of the regulator and the administrator in containing the administrative burden.

Finally, with respect to the proposed amendment to protect the Scheme from 'artificial' companies, this is clearly desirable as long as it is not used to block 'genuine' new entrants to the industry. A competitive, sustainable industry will require the entry of new companies, particularly in components and parts production. It is important that innovative new entrants are encouraged, irrespective of the opposition to such entry expressed by existing participants in ACIS.

Endnotes

- 1 Senate Hansard, 6 September 2000, p. 17381.
- 2 A 'person' includes bodies corporate as well as individuals: *Acts Interpretation Act 1901*, s 22(1)(a).
- 3 'Eligible investments' are type A, B or C in relation to a MVP, types D or E investments in relation to an ACP, types F or G in relation to an AMTP and types H or I in relation to an ASP (section 6 of the Act).
- 4 Where a body corporate is: a holding company of another body corporate; a subsidiary of another body corporate; or a subsidiary of a holding company of another body corporate; the first-mentioned body and the other body are related to each other.
- 5 Section 3 states that the purpose is to provide transitional assistance to encourage competitive investment and innovation in the automotive industry 'in order to achieve sustainable growth, both in the Australian market and internationally, in the context of trade liberalisation'.
- 6 Explanatory Memorandum, p. 6.
- 7 Statutory Rules 2000 No. 243.
- 8 Regulation 2.
- 9 Senate Hansard, 6 September 2000, p. 17381.
- 10 *ibid.*

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