

Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Industry, Innovation and Science Portfolio
2015-16 Additional Budget Estimates
11 February 2016

AGENCY/DEPARTMENT: DEPARTMENT OF INDUSTRY, INNOVATION AND SCIENCE

TOPIC: Registration under ATS

REFERENCE: Question on Notice (Hansard, 11 February 2016, page 111)

QUESTION No.: AI-25

Senator KIM CARR: Can a firm register under ATS for more than two successive years—yes or no?

Ms Facey: They can apply as a separate application. They cannot apply for ongoing registration. It creates that break where they do not get paid for that last quarter.

Senator KIM CARR: I see. If they were to apply for the first quarter of the subsequent year, section 2.258 would not apply?

Ms Facey: It means that they can get that separate registration for the new period, but they do not get the last quarter.

Senator KIM CARR: Let us be clear about this: they can apply in the third year if they are prepared to forgo the last quarter of the second year.

Ms Facey: That is right.

Senator KIM CARR: How many firms have done that?

Ms Facey: There are three companies in their third, or more, year.

Senator KIM CARR: Are you explaining to participants your interpretation of that clause?

Ms Facey: We are actually about to put out a newsletter about that. This has been, obviously, before the court, so we are going to put out a—

Senator KIM CARR: A bulletin. I have seen correspondence from the department. To my reading of it, in the interpretation of that cause—and this was from last year—and in the interpretation of the company on the basis of their legal advice, they could not apply for the third year.

Ms Facey: This is where the new application is okay. You cannot apply for three years, but you can put in the new application.

Senator KIM CARR: That is quite a significant development.

Ms Facey: Of course this has just been decided by the Federal Court.

Senator KIM CARR: What date was that?

Ms Facey: That was in January this year.

Senator KIM CARR: I see. Do you have a date in January? Can I look it up? Or can you provide me with a copy of the judgement?

Ms Butler: We will take it on notice and provide that.

Ms Facey: It was 29 January.

Senator KIM CARR: So that is very recent. Thank you very much. That will be really helpful. Has any consideration been given to the need to change any of the regulations in the light of this judgement to make it clearer?

Ms Facey: Not at this time.

Senator KIM CARR: Will you take that on notice?

Ms Facey: Yes

ANSWER

1. The case before the Federal Court of Australia was *Automotive Components Limited (Receivers and Managers appointed) (in liquidation) v Secretary, Department of Industry and Science [2016] FCAFC 6*. The case judgement can be found at: <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2016/2016fcafc0006>.
2. The Federal Court found that Automotive Transformation Scheme (ATS) participants may apply for a new registration where a participant's National Interest two year maximum period is about to expire. An upcoming ATS newsletter to participants will explain the Federal Court decision and will formalise existing advice to participants regarding the available options when the National Interest period is about to expire and scheme eligibility remains an issue. There is no intention to make changes to the ATS regulations in light of the Federal Court decision.