



ACIS Administration Act 1999

No. 139, 1999



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An Act to promote competitiveness, and encourage investment, in the automotive industry, and for related purposes

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ACIS Administration Act 1999

No. 139, 1999

An Act to promote competitiveness, and encourage investment, in the automotive industry, and for related purposes

[Assented to 3 November 1999]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *ACIS Administration Act 1999*.

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2 Commencement

This Act commences immediately after the commencement of the *Customs Tariff Amendment (ACIS Implementation) Act 1999*.

3 Purpose of the Act

The purpose of this Act is to provide transitional assistance to encourage competitive investment and innovation in the Australian automotive industry in order to achieve sustainable growth, both in the Australian market and internationally, in the context of trade liberalisation.

4 Overview of the Act

- (1) This Act sets up ACIS for the purpose set out in section 3. Under ACIS, participants receive duty credit which can be used to offset customs duty payable on certain eligible imports (item 41E of Schedule 4 to the Tariff).
- (2) ACIS has a \$2,000,000,000 cap on the value of certain modulated credit that can be entered in the ACIS ledger (section 53).
- (3) Participants can receive duty credit in respect of the period starting on the scheme commencement date and ending on 31 December 2005 provided the cap referred to in subsection (2) has not already been reached. Duty credits can be applied to offset customs duty until 31 December 2006.

Note: The scheme may start before 1 January 2001 but, if it does, it must start on the first day of a calendar year (see *scheme commencement date* in subsection 6(1)).
- (4) Under ACIS, certain persons may apply for registration under the scheme (Part 2).
- (5) Once registered, a participant has an obligation to make quarterly returns in accordance with Part 3.
- (6) On the basis of such returns, a participant is eligible to earn unmodulated credit (Part 4) depending on:
 - (a) the participant's production of motor vehicles, engines or engine components (MVPs only); and

- (b) the participant's investment in certain plant and equipment and research and development.
- (7) The scheme provides for a modulation process (Part 5) under which unmodulated credit is converted into modulated credit, having regard, where appropriate, to the \$2,000,000,000 cap and a personal cap on each participant (section 54).
- (8) Duty credit is modulated credit that has been entered in the ACIS ledger.
- (9) The ACIS ledger is dealt with in Part 6.
- (10) Duty credit can be:
 - (a) transferred to another person (Part 7); or
 - (b) applied to the importation of certain eligible imports (the Secretary may restrict the uses to which certain kinds of modulated credit can be put (Part 7)); or
 - (c) offset against an amount of unearned credit liability imposed on a person in respect of unearned duty credit (Part 9).
- (11) Under the scheme, there are powers of audit (Part 8).
- (12) Certain unearned duty credit can be recovered as provided for in Part 9.
- (13) Part 10 sets out document retention obligations (section 108) and obligations to update business plans on a regular basis (section 109).
- (14) Participants may be deregistered in the circumstances set out in Part 11.
- (15) Part 12 provides for administrative review of certain decisions.
- (16) Part 13 provides for delegation of powers and the making of regulations.

5 Offences

- (1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

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- (2) A maximum penalty that is specified:
- (a) at the foot of a section of this Act (other than a section that is divided into subsections); or
 - (b) at the foot of a subsection of this Act;
- indicates that a person who contravenes the section or subsection is guilty of an offence against the section or subsection that is punishable, on conviction, by a penalty up to that maximum.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: If the specified penalty is imprisonment only, section 4B of the *Crimes Act 1914* allows the court to impose a fine instead of imprisonment or in addition to imprisonment.

6 Definitions

- (1) In this Act:

ACIS means the Automotive Competitiveness and Investment Scheme established by section 13.

ACIS ledger means the ledger established by the Secretary under section 62.

ACIS year means the year commencing on the scheme commencement date and each succeeding year before the year commencing 1 January 2006.

ACP means a person registered as an automotive component producer under section 26.

Note: Not all automotive component producers are eligible for registration as ACPs.

AMTP means a person registered as an automotive machine tool or automotive machine tooling producer under section 26.

Note: Not all automotive machine tool or automotive machine tooling producers are eligible for registration as AMTPs.

approved form means a form approved under section 8.

approved plant and equipment means plant and equipment of a kind declared by the regulations to be approved plant and equipment for the purposes of this Act.

approved research and development means research and development of a kind declared by the regulations to be approved research and development for the purposes of this Act.

ASP means a person registered as an automotive service provider under section 26.

Note: Not all automotive service providers are eligible for registration as ASPs.

automotive component means any component (whether its construction or assembly has been completed or not):

- (a) that is for use in any type of vehicle that, if imported, would be classified to Chapter 87 of Schedule 3 to the Tariff; or
- (b) that has the essential character of a component to which paragraph (a) applies;

other than a component of a kind that is declared by the regulations not to be an automotive component.

automotive machine tooling means machine tooling of a kind declared by the regulations to be automotive machine tooling for the purposes of this Act.

automotive machine tools means machine tools of a kind declared by the regulations to be automotive machine tools for the purposes of this Act.

automotive services means design, development, engineering or production services of a kind declared by the regulations to be automotive services for the purposes of this Act.

duty credit means modulated capped production credit, modulated uncapped production credit, or modulated investment credit that has been entered in the ACIS ledger.

eligible imports mean goods described in column 2 of item 41E of Schedule 4 to the Tariff.

eligible investments means:

- (a) in relation to an MVP—type A, type B or type C investments by the MVP; or

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- (b) in relation to an ACP—type D or type E investments by the ACP; or
- (c) in relation to an AMTP—type F or type G investments by the AMTP; or
- (d) in relation to an ASP—type H or type I investments by the ASP.

engine means an engine that:

- (a) is designed to propel a motor vehicle; and
- (b) has been fitted by its producer with a crankshaft;

whether that engine is a dressed or undressed engine, whether it is a short or long engine and whether it is a finished or unfinished engine.

engine components means goods that, if imported, would be classified to Schedule 3 to the Tariff as follows:

- (a) parts for engines classified to heading 8409;
- (b) balance shafts, camshafts, crankshafts, plain shaft bearings, flywheels and pulleys classified to heading 8483;
- (c) oil pumps, fuel pumps and water pumps classified to heading 8413;
- (d) starter motors, alternators and ignition equipment classified to heading 8511;
- (e) engine management systems classified to heading 8537 or 9032;
- (f) automatic voltage regulators classified to heading 9032;
- (g) ignition wiring sets classified to heading 8544.

final quarter means the quarter ending on 31 December 2005.

insolvent under administration means a person who:

- (a) under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
- (b) under the law of an external Territory or the law of a foreign country, has the status of an undischarged bankrupt;

and includes:

- (c) a person any of whose property is subject to control under:

-
- (i) section 50 or Division 2 of Part X of the *Bankruptcy Act 1966*; or
 - (ii) a corresponding provision of the law of an external Territory or the law of a foreign country; or
 - (d) a person who has, at any time during the preceding 3 years, executed a deed of assignment or a deed of arrangement under:
 - (i) Part X of the *Bankruptcy Act 1966*; or
 - (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country; or
 - (e) a person whose creditors have, within the preceding 3 years, accepted a composition under:
 - (i) Part X of the *Bankruptcy Act 1966*; or
 - (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country.

modulated ACP, AMTP or ASP investment credit, in relation to a quarter and an ACP, AMTP or ASP, means the unmodulated investment credit (if any) worked out in relation to that quarter and that ACP, AMTP or ASP, modulated in accordance with section 59.

modulated capped production credit, in relation to a quarter and an MVP, means the unmodulated capped production credit (if any) worked out in relation to that quarter and that MVP, modulated in accordance with section 56.

modulated credit means:

- (a) modulated capped production credit; and
- (b) modulated uncapped production credit; and
- (c) modulated investment credit.

modulated investment credit means:

- (a) modulated MVP investment credit; and
- (b) modulated ACP, AMTP or ASP investment credit.

modulated MVP investment credit, in relation to a quarter and an MVP, means the unmodulated investment credit (if any) worked

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out in relation to that quarter and that MVP, modulated in accordance with section 57.

modulated uncapped production credit, in relation to a quarter and an MVP, means the unmodulated uncapped production credit (if any) worked out in relation to that quarter and that MVP, modulated in accordance with section 56.

monitoring warrant means a warrant issued under section 92.

motor vehicle means any vehicle (other than a used vehicle):

- (a) that has a gross vehicle weight of not more than 3.5 tonnes; and
- (b) that, if imported, would be classified to:
 - (i) a subheading of heading 8702 or 8703 (other than 8703.10) of Schedule 3 to the Tariff; or
 - (ii) subheading 8704.21, 8704.31 or 8704.90 of Schedule 3 to the Tariff.

motor vehicle producer means a person who undertakes the production of motor vehicles or engines.

MVP means a person registered as a motor vehicle producer under section 26.

Note: Not all motor vehicle producers are eligible for registration as MVPs.

MVP production, in relation to a quarter and to an MVP, means the completion in that quarter by the MVP of the production of:

- (a) motor vehicles; or
- (b) engines; or
- (c) engine components.

original equipment means:

- (a) an automotive component for use in the production of a motor vehicle or an engine by a motor vehicle producer; or
- (b) an automotive component designed to the specifications of a motor vehicle producer and purchased by that producer for post assembly fitment to a motor vehicle.

participant, in relation to ACIS, means a person registered as an MVP, ACP, AMTP or ASP.

Note: Person includes a group (see subsection 6(3)).

passenger motor vehicle means any motor vehicle that, if imported, would be classified to any of the following subheadings of Schedule 3 to the Tariff:

8703.21.19

8703.22.19

8703.23.19

8703.24.19

8703.31.19

8703.32.19

8703.33.19

8703.90.19

production has the meaning given in section 7.

production value means:

- (a) in relation to MVP production achieved by a particular MVP—the value of that production; or
- (b) in relation to an automotive component produced by a particular ACP—the value of that automotive component; or
- (c) in relation to an automotive machine tool, or automotive machine tooling, produced by a particular AMTP—the value of that tool or tooling; or
- (d) in relation to an automotive service provided by a particular ASP—the value of that service;

worked out in accordance with regulations made for the purpose of this definition.

provided in Australia has the meaning given in subsection 7(7).

quarter means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October of a year.

registration quarter, in relation to a person in respect of whom the Secretary has decided to grant an application for registration as a

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participant, means the quarter in which the registration took effect, or is taken to have effect, under section 28.

relevant quarter, in relation to a participant who provides a return for a particular quarter as such a participant under section 35, means each of the quarters included within the period comprising:

- (a) if that particular quarter is the registration quarter for that participant—the 8 quarters preceding that registration quarter; and
- (b) if that particular quarter is the first quarter following the registration quarter for that participant—the 9 quarters preceding that particular quarter; and
- (c) if that particular quarter is the second quarter following the registration quarter for that participant—the 10 quarters preceding that particular quarter; and
- (d) if that particular quarter is any later quarter following the registration quarter for that participant—the 11 quarters preceding that particular quarter.

sale has a meaning affected by subsection (2).

sales value, in relation to goods sold and services provided by a participant, means the value of the goods sold or services provided less, in the case of goods, any sales tax payable on those goods.

scheme commencement date means 1 January 2001 unless, before that date, an earlier date, which must be the first day of a calendar year, is proclaimed for the purposes of this definition.

Secretary means the Secretary to the Department.

services includes the provision, grant or conferral of any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities under a contract, for which remuneration is payable in the form of a royalty or similar exaction.

Tariff means the *Customs Tariff Act 1995*.

type A investment, in relation to a quarter and an MVP, means investment undertaken by the MVP in that quarter (whether or not that quarter preceded, or in part preceded, the MVP's registration)

in that part of the MVP's approved plant and equipment used to produce motor vehicles, engines or engine components.

type B investment, in relation to a quarter and an MVP, means investment undertaken by the MVP in that quarter (whether or not that quarter preceded, or in part preceded, the MVP's registration) in that part of the MVP's approved plant and equipment used:

- (a) to produce automotive components (other than engines or engine components); or
- (b) to produce automotive machine tools or automotive machine tooling; or
- (c) to facilitate the provision of automotive services; other than for the MVP's own use.

type C investment, in relation to a quarter and an MVP, means investment undertaken by the MVP in that quarter (whether or not that quarter preceded, or in part preceded, the MVP's registration) in that part of the MVP's approved research and development that is directed:

- (a) at the production of automotive components (other than engines or engine components); or
- (b) at the production of automotive machine tools or automotive machine tooling; or
- (c) at facilitating the provision of automotive services; other than for the MVP's own use.

type D investment, in relation to a quarter and an ACP, means investment undertaken by the ACP in that quarter (whether or not that quarter preceded, or in part preceded, the ACP's registration) in that part of the ACP's approved plant and equipment that:

- (a) is used to produce automotive components, automotive machine tools or automotive machine tooling; or
- (b) is used to facilitate the provision of automotive services.

type E investment, in relation to a quarter and to an ACP, means investment undertaken by the ACP in that quarter (whether or not that quarter preceded, or in part preceded, the ACP's registration) in that part of the ACP's approved research and development that is directed:

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- (a) at the production of the automotive components, automotive machine tools or automotive machine tooling; or
- (b) at facilitating the provision of automotive services.

type F investment, in relation to a quarter and to an AMTP, means investment undertaken by the AMTP in that quarter (whether or not that quarter preceded, or in part preceded, the AMTP's registration) in that part of the AMTP's approved plant and equipment that is used to produce automotive machine tools or automotive machine tooling.

type G investment, in relation to a quarter and to an AMTP, means investment undertaken by the AMTP in that quarter (whether or not that quarter preceded, or in part preceded, the AMTP's registration) in that part of the AMTP's approved research and development that is directed at the production of the automotive machine tools or automotive machine tooling.

type H investment, in relation to a quarter and to an ASP, means investment undertaken by the ASP in that quarter (whether or not that quarter preceded, or in part preceded, the ASP's registration) in that part of the ASP's approved plant and equipment that is directed at facilitating the provision of automotive services.

type I investment, in relation to a quarter and to an ASP, means investment undertaken by the ASP in that quarter (whether or not that quarter preceded, or in part preceded, the ASP's registration) in that part of the ASP's approved research and development that is directed at facilitating the provision of automotive services.

unearned credit liability means a liability imposed under the *ACIS (Unearned Credit Liability) Act 1999*.

unmodulated capped production credit, in relation to a quarter and to an MVP, means the unmodulated capped production credit (if any) worked out in relation to that quarter and that MVP in accordance with subsection 42(2).

unmodulated investment credit:

- (a) in relation to a quarter and to an MVP—means the unmodulated investment credit worked out in relation to that

quarter and that MVP in accordance with section 43, 44 or 45; or

- (b) in relation to a quarter and an ACP—means the unmodulated investment credit worked out in relation to that quarter and that ACP in accordance with section 46 or 47; or
- (c) in relation to a quarter and an AMTP—means the unmodulated investment credit worked out in relation to that quarter and that AMTP in accordance with section 48 or 49; or
- (d) in relation to a quarter and an ASP—means the unmodulated investment credit worked out in relation to that quarter and that ASP in accordance with section 50 or 51.

unmodulated uncapped production credit, in relation to a quarter and to an MVP, means the unmodulated uncapped production credit (if any) worked out in relation to that quarter and that MVP in accordance with subsection 42(1).

warrant premises, in relation to a monitoring warrant, means the premises to which the warrant relates.

- (2) For the purposes of this Act, the regulations may specify:
 - (a) circumstances in which a sale of goods or services is taken to have occurred; and
 - (b) circumstances in which a sale of goods or services is taken not to have occurred.
- (3) For the purposes of this Act, a reference to a person registered as an MVP, ACP, AMTP or ASP includes a reference to a group that is so registered in accordance with Division 4 of Part 2.

7 Meaning of production of goods and provision of services in Australia

Assembly of components can be production

- (1) For the purposes of this Act, a person is taken to produce a thing even if the process of production consists entirely of assembling the thing from component parts and the person does not produce any of those component parts.

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No production unless sale has occurred

- (2) For the purposes of this Act, a person is taken to produce a thing only at the time when the person sells the thing produced.

Production of engines

- (3) Subject to subsections (1) and (2), an engine is taken to have been produced in Australia if:
- (a) the fitting of the crankshaft into the engine is carried out in Australia; and
 - (b) the engine has passed final quality control at the end of a production line in Australia.

Production of motor vehicles

- (4) Subject to subsections (1) and (2), a motor vehicle is taken to have been produced in Australia if the motor vehicle:
- (a) has undergone a process of colour coated painting in Australia; and
 - (b) has passed final quality control at the end of a production line in Australia.

Production of engine components

- (5) Subject to subsections (1) and (2), an engine component is taken to have been produced in Australia if:
- (a) at least one substantial process in the manufacture of the component is carried out in Australia; and
 - (b) the component has passed final quality control at the end of a production line in Australia.

Production of automotive components, automotive machine tools or automotive machine tooling

- (6) Subject to subsections (1) and (2), an automotive component, an automotive machine tool or automotive machine tooling is taken to have been produced in Australia if:

- (a) at least one substantial process in the manufacture of the automotive component, automotive machine tool or automotive machine tooling is carried out in Australia; and
- (b) the automotive component, automotive machine tool or automotive machine tooling, as the case requires, has passed final quality control at the end of a production line in Australia.

Provision of automotive services

- (7) An automotive service is taken to have been provided in Australia if:
 - (a) the design, development, engineering or production work comprising that service is carried out predominantly in Australia; and
 - (b) payment has been received for carrying out the service.

8 Approved forms

The Secretary may approve a form by instrument in writing.

9 Arm's length transactions

- (1) For the purposes of this Act, whenever it is necessary to determine:
 - (a) the production value or sales value of any motor vehicles, engines or engine components sold by a participant to another person; or
 - (b) the production value or sales value of any other goods or services sold by a participant to another person;that production value or sales value is to be determined on the basis that the participant and other person are at arm's length.
- (2) For the purposes of this Act:
 - (a) whenever it is necessary to determine the value of any investment in plant and equipment, or in research and development, undertaken by a participant; and
 - (b) that investment involves the participant entering into a transaction with another person;

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the value of that investment is to be determined on the basis that the participant and the other person are at arm's length.

- (3) For the purposes of this Act, the Minister may make guidelines:
- (a) for the purposes of determining the circumstances when the parties to a transaction referred to in subsection (1) or (2) are to be treated as not being at arm's length; and
 - (b) if the parties to a sale of motor vehicles, engines or engine components referred to in paragraph (1)(a) are to be treated, in accordance with the guidelines, as not being at arm's length—for the purpose of determining what would have been the production value or sales value of the motor vehicles, engines or engine components to which the transaction relates had the parties been at arm's length; and
 - (c) if the parties to a sale of other goods or services referred to in paragraph (1)(b) are to be treated, in accordance with the guidelines, as not being at arm's length—for the purpose of determining what would have been the production value or sales value of the goods or services to which the transaction relates had the parties been at arm's length; and
 - (d) if the parties to a transaction relating to an investment in plant and equipment referred to in paragraph (2)(a) are to be treated, in accordance with the guidelines, as not being at arm's length—for the purpose of determining what would have been the amount of investment in plant and equipment to which the transaction relates had the parties been at arm's length; and
 - (e) if the parties to a transaction relating to an investment in research and development referred to in paragraph (2)(b) are to be treated, in accordance with the guidelines, as not being at arm's length—for the purpose of determining what would have been the amount of investment in research and development to which the transaction relates had the parties been at arm's length.
- (4) Guidelines made for the purposes of subsection (3) are disallowable instruments within the meaning of section 46A of the *Acts Interpretation Act 1901*.

10 Determination of entitlement to modulated credit between participants

- (1) If more than one participant is involved in a transaction giving rise to the issue of modulated credit, the modulated credit will be issued to only one of those participants.
- (2) The Minister must make rules for identifying, in circumstances where more than one participant is involved in a transaction giving rise to the issue of modulated credit, the participant who is entitled to that credit.
- (3) A rule made under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

11 Other Commonwealth assistance

- (1) For the purposes of this Act, a participant has received *other Commonwealth assistance* if the participant:
 - (a) being an MVP, has received and is entitled to financial assistance other than duty credit in relation to the production of motor vehicles, engines or engine components of a kind giving rise to an entitlement to duty credit under this Act; or
 - (b) being a participant of any kind, has received and is entitled to financial assistance other than duty credit for investment in plant and equipment of a kind giving rise to an entitlement to duty credit under this Act; or
 - (c) being a participant of any kind, has received and is entitled to financial assistance other than duty credit for investment in research and development of a kind giving rise to an entitlement to duty credit under this Act.
- (2) For the purposes of paragraph (1)(a), an MVP is taken to have received and to have been entitled to financial assistance other than duty credit in relation to the production of motor vehicles, engines or engine components of a kind giving rise to an entitlement to duty credit under this Act if that MVP, whether before or after becoming such an MVP, received and was entitled to financial assistance other than duty credit in relation to goods whose later

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sale completed their production as such motor vehicles, engines or engine components.

- (3) The Minister may determine, in writing, that a specified form of assistance provided by the Commonwealth:
 - (a) is not financial assistance for the purposes of this section; or
 - (b) is financial assistance for the purposes of this section.
- (4) If the determination specifies that a form of assistance is financial assistance, the determination may also specify the method by which the amount of assistance received is to be worked out.
- (5) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Part 2—Establishment of, and participation in, ACIS

Division 1—Overview

12 Overview of Part

- (1) This Part establishes ACIS and sets out the basis on which persons can participate in the scheme.
- (2) Division 2 establishes ACIS.
- (3) Division 3 contains rules concerning the number of registrations a person can have under ACIS (Subdivision A) and the effect further registrations may have on a participant's registration (Subdivision B).
- (4) Division 4 provides for groups of companies to be registered as a single entity under ACIS.
- (5) Division 5 sets out the formal requirements for applications for registration and the considerations that the Secretary must take into account when deciding whether to grant an application.
- (6) Division 6 sets out the ongoing requirements that a participant must achieve to maintain the participant's registration.

Part 2 Establishment of, and participation in, ACIS

Division 2 Establishment of ACIS

Section 13

Division 2—Establishment of ACIS

13 Establishment of Automotive Competitiveness and Investment Scheme

There is established by this Act a scheme to be known as the Automotive Competitiveness and Investment Scheme or ACIS.

Division 3—Registration under ACIS

Subdivision A—Rules about registration

14 Rules about the number of registrations a participant may have under ACIS

Rule for MVPs

- (1) A person who is registered as an MVP must not be registered as an ACP, AMTP or ASP while that person is an MVP.

Rule for ACPs

- (2) A person who is registered as an ACP must not be registered as an MVP, AMTP or ASP while that person is an ACP.

Rule for AMTPs

- (3) A person who is registered as an AMTP may also be registered as an ASP, but must not be registered as an MVP or ACP, while the person is registered as an AMTP. The person seeking registration as an AMTP and an ASP must apply separately for each registration as provided for in Subdivision B.

Rule for ASPs

- (4) A person who is registered as an ASP may also be registered as an AMTP, but must not be registered as an MVP or ACP, while the person is registered as an ASP. The person seeking registration as an ASP and an AMTP must apply separately for each registration as provided for in Subdivision B.

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15 Rules about the effect of further applications for registration on existing registrations

Rule for MVPs

- (1) If an MVP applies for registration as an ACP, AMTP or ASP and the Secretary grants the later application, the registration as an MVP ceases to have effect immediately before the day on which the later application for registration is granted.

Rule for ACPs

- (2) If an ACP applies for registration as an MVP, AMTP or ASP and the Secretary grants the later application, the registration as an ACP ceases to have effect immediately before the day on which the later application for registration is granted.

Rule for AMTPs seeking registration as MVPs or as ACPs

- (3) If an AMTP applies for registration as an MVP or ACP and the Secretary grants the later application, the registration as an AMTP ceases to have effect immediately before the day on which the later application for registration is granted.

Rule for AMTPs seeking registration as ASPs instead

- (4) If:
 - (a) an AMTP applies for registration as an ASP; and
 - (b) in that application, the AMTP notifies the Secretary that, if the registration is granted, the AMTP no longer desires to be registered as an AMTP; and
 - (c) the Secretary grants the later application;the registration as an AMTP ceases to have effect immediately before the day on which the later application for registration is granted.

Rule for ASPs seeking registration as MVPs or as ACPs

- (5) If an ASP applies for registration as an MVP or ACP and the Secretary grants the later application, the registration as an ASP

ceases to have effect immediately before the day on which the later application for registration is granted.

Rule for ASPs seeking registration as AMTPs instead

- (6) If:
- (a) an ASP applies for registration as an AMTP; and
 - (b) in that application, the ASP notifies the Secretary that, if the registration is granted, the ASP no longer desires to be registered as an ASP; and
 - (c) the Secretary grants the later application;
- the registration as an ASP ceases to have effect immediately before the day on which the later application for registration is granted.

Subdivision B—Applications for registration

16 Application for MVP registration

- (1) A person who is a motor vehicle producer may apply to the Secretary for registration as an MVP if:
- (a) in the 12 months preceding that application, the person produced in Australia at least 30,000 motor vehicles or at least 30,000 engines; or
 - (b) where paragraph (a) does not apply—the person is able to demonstrate, to the satisfaction of the Secretary, that in the 12 months following the application, the person is likely to produce in Australia at least 30,000 motor vehicles or at least 30,000 engines; or
 - (c) where neither paragraph (a) nor (b) applies—the person has been given permission by the Minister, under section 20, to apply for registration as an MVP.
- (2) The application must be made in accordance with Division 5 and conform to any specifications set out in the regulations.

17 Application for ACP registration

- (1) A person (not being a group of related companies that is treated as a single person in accordance with section 21) who is a producer of

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automotive components may apply to the Secretary for registration as an ACP if:

- (a) in the 12 months preceding the application:
 - (i) the person produced in Australia at least one kind of automotive component for use as original equipment in at least 30,000 motor vehicles or in at least 30,000 engines and the production value of such component was at least \$500,000; or
 - (ii) the production value of the automotive components produced by the person in Australia as original equipment was at least \$500,000 and comprised at least 50% of the production value of all automotive components produced by the person; or
 - (b) where paragraph (a) does not apply—the person is able to demonstrate, to the satisfaction of the Secretary, that in the 12 months following the application:
 - (i) the person is likely to produce in Australia at least one kind of automotive component for use as original equipment in at least 30,000 motor vehicles or at least 30,000 engines and the production value of such component will be at least \$500,000; or
 - (ii) the production value of the automotive components produced by the person in Australia as original equipment is likely to be at least \$500,000 and to comprise at least 50% of the production value of all automotive components produced by the person; or
 - (c) where neither paragraph (a) nor (b) applies—the person has been given permission by the Minister, under section 20, to apply for registration as an ACP.
- (2) A person (being a group of related companies that is treated as a single person in accordance with section 21) who is a producer of automotive components may apply to the Secretary for registration as an ACP if:
- (a) in the 12 months preceding the application:
 - (i) the person produced in Australia at least one kind of automotive component for use as original equipment in at least 30,000 motor vehicles or in at least 30,000

- engines and the production value of such component was at least \$500,000; and
- (ii) the production value of the automotive components produced by the person in Australia as original equipment comprised at least 50% of the production value of all automotive components produced by the person; or
- (b) where paragraph (a) does not apply—the person is able to demonstrate, to the satisfaction of the Secretary, that in the 12 months following the application:
- (i) the person is likely to produce in Australia at least one kind of automotive component for use as original equipment in at least 30,000 motor vehicles or at least 30,000 engines and the production value of such component will be at least \$500,000; and
 - (ii) the production value of the automotive components produced by the person in Australia as original equipment is likely to comprise at least 50% of the production value of all automotive components produced by the person; or
- (c) where neither paragraph (a) nor (b) applies—the person has been given permission by the Minister, under section 20, to apply for registration as an ACP.
- (3) An application under subsection (1) or (2) must be made in accordance with Division 5 and conform to any specifications set out in the regulations.

18 Application for AMTP registration

- (1) A person who is a producer of automotive machine tools or automotive machine tooling may apply to the Secretary for registration as an AMTP if:
 - (a) in the 12 months preceding the application:
 - (i) the production value of automotive machine tools and automotive machine tooling produced in Australia by that person was at least \$500,000; and

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- (ii) at least 50% of that value was for automotive machine tools and automotive machine tooling used to produce original equipment; or
 - (b) where paragraph (a) does not apply—the person is able to demonstrate, to the satisfaction of the Secretary, that in the 12 months following the application:
 - (i) the production value of automotive machine tools and automotive machine tooling produced in Australia by that person is likely to be at least \$500,000; and
 - (ii) at least 50% of that value is likely to be for automotive machine tools and automotive machine tooling used to produce original equipment; or
 - (c) where neither paragraph (a) nor (b) applies—the person has been given permission by the Minister, under section 20, to apply for registration as an AMTP.
- (2) The application must be made in accordance with Division 5 and conform to any specifications set out in the regulations.

19 Application for ASP registration

- (1) A person who is a provider of automotive services may apply to the Secretary for registration as an ASP if:
- (a) in the 12 months preceding the application:
 - (i) the production value of automotive services provided by that person in Australia was at least \$500,000; and
 - (ii) at least 50% of that production value was for services related to the production of motor vehicles or original equipment; or
 - (b) where paragraph (a) does not apply—the person is able to demonstrate, to the satisfaction of the Secretary, that in the 12 months following the application:
 - (i) the production value of automotive services proposed to be provided by that person in Australia is likely to be at least \$500,000; and
 - (ii) at least 50% of that production value is likely to be for services related to the production of motor vehicles or original equipment; or

- (c) where neither paragraph (a) nor (b) applies—the person has been given permission by the Minister, under section 20, to apply for registration as an ASP.
- (2) The application must be made in accordance with Division 5 and conform to any specifications set out in the regulations.

20 Ministerial permission to apply for registration in the national interest

- (1) A person may seek the Minister's permission to apply for registration as a participant on the basis that the registration would be in the national interest.
- (2) If the Minister is satisfied that, subject to the person's meeting all the registration requirements other than the requirements set out in:
 - (a) if the person seeks permission to apply for registration as an MVP—paragraph 16(1)(a) or (b); or
 - (b) if the person (not being a group of related companies that is treated as a single person in accordance with section 21) seeks permission to apply for registration as an ACP—paragraph 17(1)(a) or (b); or
 - (c) if the person (being a group of related companies that is treated as a single person in accordance with section 21) seeks permission to apply for registration as an ACP—paragraph 17(2)(a) or (b); or
 - (d) if the person seeks permission to apply for registration as an AMTP—paragraph 18(1)(a) or (b); or
 - (e) if the person seeks permission to apply for registration as an ASP—paragraph 19(1)(a) or (b);it would be in the national interest for the person to be so registered, the Minister may, by notice in writing, give that permission.
- (3) Without limiting, by implication, the matters that the Minister may take into account in determining whether to grant a permission under this section for a person to apply for registration, the Minister may have regard to all or any of the following:
 - (a) whether the person would have been able to comply with the normal threshold eligibility requirements but for

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- circumstances beyond the person's control such as a natural disaster, an industrial accident or an industrial dispute;
- (b) whether the registration of the person would significantly enhance the competitiveness of the Australian automotive industry;
 - (c) whether the registration of the person would provide significant benefits either to the Australian automotive industry or to the Australian economy;
 - (d) whether the registration of the person would introduce significant innovations in the Australian automotive industry;
 - (e) whether the registration of the person would generate significant employment or investment opportunities in the Australian automotive industry;
 - (f) whether the registration of the person would have significant strategic, regional or environmental impacts.
- (4) To assist the Minister in determining whether to give that permission, the person must produce to the Minister, within a period specified by the Minister:
- (a) any information or documents that the Minister considers are likely to be relevant to the Minister's consideration of the application for that permission; and
 - (b) a business plan of a kind that will, if the Minister grants the approval to apply for registration, be required to be produced to the Secretary under subsection 23(3).
- (5) If the Minister grants a person permission to apply for registration, the Minister must, in the decision granting that permission, set out the conditions to which the permission, and any subsequent registration, is subject, including conditions relating to the ongoing registration of the person.
- (6) For the avoidance of doubt, conditions determined by the Minister under subsection (5) do not affect the operation of any provision of this Act that is consistent with those conditions.
- (7) A decision of the Minister that it is in the national interest to grant a person permission to make an application for registration is a disallowable instrument under section 46A of the *Acts Interpretation Act 1901*.
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Division 4—Participation in ACIS by groups of companies

21 Certain groups of companies may seek permission to apply for registration as a single entity

- (1) A group of related bodies corporate (within the meaning of sections 9 and 50 of the Corporations Law) may apply to the Secretary for permission to seek registration as a participant as if the group were a single person.
- (2) The application for the Secretary's permission must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) contain such information as the form requires; and
 - (d) be accompanied by such documents as are necessary to establish that the companies are related; and
 - (e) without limiting the generality of paragraph (b), must nominate the member of the group who:
 - (i) is to act as the nominated contact person; and
 - (ii) is to receive duty credit on behalf of the group.
- (3) Only a resident of Australia may be specified as the nominated contact person.
- (4) The Secretary must deal with the application for permission in accordance with the regulations.
- (5) A decision by the Secretary to grant or to refuse permission must be made in writing and, in the case of a refusal, be accompanied by a statement of the reasons for the refusal.
- (6) A decision to grant permission must specify the conditions, if any, to which the application is subject.
- (7) A decision to grant permission takes effect:
 - (a) on a day specified in the decision; or
 - (b) if no day is specified—on the day on which the decision is given.

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22 Legal status of a group permitted to make application for registration

- (1) If the Secretary grants a group permission to make application to be registered as a participant:
 - (a) the group's eligibility to make that application for registration; and
 - (b) if that application for registration is refused—the group's right to seek review of the decision refusing that application; and
 - (c) if the application for registration is granted—the group's rights and liabilities under this Act, under the *Customs Act 1901* (so far as that Act relates to persons registered under this Act), under the Tariff (so far as the Tariff relates to persons registered under this Act) and under the *ACIS (Unearned Credit Liability) Act 1999*;
are to be determined:
 - (d) as if the group possessed legal personality; and
 - (e) as if any act or thing done by or to the nominated contact person were an act or thing done by or to the group.
- (2) In dealing with an application by a group given permission to apply for registration as a participant, the Secretary may treat all acts or things done by or to members of the group as if they were acts or things done by or to the group considered together.
- (3) If the Secretary is satisfied, at any time, that, in relation to a group of companies given permission to seek registration as a participant or in relation to a group of companies that are so registered:
 - (a) any company in the group would not be a fit and proper person if that company were making application for registration in its own right; or
 - (b) any director of a company in the group and any officer or shareholder of a company in the group having the capacity to influence the management of that company, would not be a fit and proper person if that director, officer or shareholder were making application for registration in his or her own right;

the Secretary must decide that the group is not a fit and proper person within the meaning of section 29.

Division 5—Formal requirements for, and consideration of, applications for registration

23 The content of the application for registration

- (1) An application for registration as a participant must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) be accompanied by such documentation (if any) as the form requires; and
 - (d) be signed in the manner indicated in the form; and
 - (e) be lodged in accordance with section 24.
- (2) Without limiting paragraph (1)(c), an application for registration must include information or documents as required by the form that relates to the applicant's capability to comply with the document retention obligations under section 108.
- (3) Without limiting paragraph (1)(c), an applicant for registration must include a business plan of the applicant, containing such particulars as are required by the form, in respect of the period starting on:
 - (a) if the application is made before the scheme commencement date—the scheme commencement date; and
 - (b) if the application is made on or after the scheme commencement date—the first day of the calendar year in which the application is made;and ending on 31 December 2005.

24 Lodgment of applications

- (1) An application for registration as a participant must be lodged in accordance with this section.
- (2) The application may:
 - (a) be left at a place allocated for lodgment of ACIS applications specified in the approved form; or

- (b) be posted by pre-paid post to a postal address specified in the approved form; or
- (c) be sent by electronic facsimile to a facsimile number specified in the approved form.

25 When to apply

An application for registration may be made after the commencement of this Act.

26 Consideration of registration applications

- (1) The Secretary must examine each application for registration and, as soon as practicable but before the end of the consideration period, determine whether to grant the application.
- (2) If the Secretary is satisfied:
 - (a) that the applicant is eligible to apply for that registration; and
 - (b) that the applicant has provided the information and documents (if any) required by the approved form; and
 - (c) that the applicant can comply with the relevant document retention obligations set out in section 108; and
 - (d) where the applicant is a natural person—that the applicant is a fit and proper person; and
 - (e) where the applicant is a company—that the company is a fit and proper person; and
 - (f) where the applicant is a company—that each of the directors, and each officer or shareholder who is in a position to influence the management of the company, is a fit and proper person;the Secretary must grant the application and inform the applicant accordingly.
- (3) If the Secretary is not satisfied of a matter set out in paragraphs (2)(a) to (f), the Secretary must inform the applicant, in writing, that the application is refused and provide reasons for that refusal.
- (4) For the purposes of subsection (1), the consideration period is the period starting on the day the application is lodged and ending:

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- (a) unless paragraph (b) applies—60 days after that day; and
- (b) if the Secretary requires the applicant, under section 27, to provide further information by a specified day and the applicant duly provides the information or explains why the information cannot be provided—at the end of the period of 60 days referred to in paragraph (a) extended by the period taken to comply with the requirement or provide that explanation.

27 Secretary may seek further information

- (1) If the Secretary, on examination of an application, considers that he or she needs further information before being able to make a decision under subsection 26(1), the Secretary may, by notice in writing given to the applicant, require the applicant to provide the information to the Secretary within a period specified in the notice.
- (2) If the applicant fails or refuses, within the period specified, either to provide the further information or a reasonable explanation as to why it cannot be so provided, the applicant is taken, at the end of that period, to have withdrawn the application.

28 Date from which registration takes effect

- (1) If an application for registration (other than an application made following the Minister's permission, under section 20, to make that application) is granted before the scheme commencement date, the registration has effect on and from the scheme commencement date.
- (2) If an application for registration (other than an application made following the Minister's permission, under section 20, to make that application) is granted on or after the scheme commencement date, the registration has effect on and from the date it was granted.
- (3) If:
 - (a) an application for registration is made following the Minister's permission, under section 20, to make that application; and

- (b) that application is granted before the scheme commencement date;
- the registration has effect, subject to subsection (5), on and from:
- (c) unless paragraph (d) applies—the scheme commencement date; or
 - (d) if the Minister’s permission could be disallowed in either House of the Parliament after the scheme commencement date—the last day on which the Minister’s permission could be so disallowed.
- (4) If:
- (a) an application for registration is made following the Minister’s permission, under section 20, to make that application; and
 - (b) that application is granted on or after the scheme commencement date;
- the registration has effect, subject to subsection (5), on and from:
- (c) unless paragraph (d) applies—the date the registration was granted; or
 - (d) if the Minister’s approval could be disallowed in either House of the Parliament after the date the registration was granted—the last day on which the Minister’s approval could be so disallowed.
- (5) If:
- (a) an application for registration is made following the Minister’s permission, under section 20, to make that application; and
 - (b) that application is granted; but
 - (c) after the grant of the application the Minister’s approval is disallowed in either House of the Parliament;
- the registration never comes into effect.

29 Fit and proper person

- (1) In determining whether, in relation to an application for registration to which paragraph 26(2)(d) or (f) applies, a natural person making the application or otherwise referred to in that

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paragraph is a fit and proper person, the Secretary must have regard to the following matters:

- (a) any conviction of the person of an offence punishable by imprisonment for one year or longer:
 - (i) against a law of the Commonwealth; or
 - (ii) against a law of a State or of a Territory;if that offence was committed within the 10 years immediately before the application for registration under ACIS;
 - (b) whether the person is an insolvent under administration;
 - (c) whether a misleading statement was made by or in relation to the person in the application for registration;
 - (d) if the misleading statement was false, whether the person making the statement knew that it was false.
- (2) In determining whether, in relation to an application for registration to which paragraph 26(2)(e) relates, the company making the application is a fit and proper person, the Secretary must have regard to the following matters:
- (a) any conviction of the company for an offence punishable by a fine of \$5,000 or more:
 - (i) against a law of the Commonwealth; or
 - (ii) against a law of a State or of a Territory;
 - (b) if that offence was committed within the 10 years immediately before that decision and at a time when any person who is presently a director of the company, or an officer or shareholder of the company who presently is in a position to influence the management of the company, was such a director, officer or shareholder;
 - (c) whether the company has been placed under official management;
 - (d) whether the company is under administration within the meaning of the Corporations Law;
 - (e) whether the company has executed a deed of company arrangement under Part 5.3A of that Law that has not yet terminated;
 - (f) the company is being wound up;

- (g) whether a receiver of the property, or part of the property, of the company has been appointed.
- (3) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

Division 6—Ongoing requirements of registration

30 Ongoing requirement of MVP registration

The ongoing requirement of registration of an MVP is:

- (a) unless paragraph (b) applies—that the MVP must produce in Australia, in each period required under section 34, at least 30,000 motor vehicles or at least 30,000 engines; or
- (b) if the MVP has been registered following the Minister’s permission, under section 20, to apply for that registration—that the MVP comply with the conditions relating to ongoing registration as specified by the Minister in granting that permission.

31 Ongoing requirement of ACP registration

Requirement where ACP is not a group

- (1) The ongoing requirement of registration of an ACP that is not a group of related companies is:
 - (a) unless paragraph (b) applies:
 - (i) that the ACP must produce in Australia, in each period required under section 34, at least one kind of automotive component for use as original equipment in at least 30,000 motor vehicles or in at least 30,000 engines and the production value of such component must be at least \$500,000; or
 - (ii) that the production value of the automotive components produced in Australia in each such period by the ACP as original equipment must be at least \$500,000 and comprise at least 50% of the production value of all automotive components produced by the ACP; or
 - (b) if the ACP had been registered following the Minister’s permission, under section 20, to apply for that registration—that the ACP comply with the conditions relating to ongoing registration specified by the Minister in granting that permission.

Requirement where ACP is a group

- (2) The ongoing requirement of registration of an ACP that is a group of related companies is:
- (a) unless paragraph (b) applies:
 - (i) that the ACP must produce in Australia, in each period required under section 34, at least one kind of automotive component for use as original equipment in at least 30,000 motor vehicles or in at least 30,000 engines and the production value of such component must be at least \$500,000; and
 - (ii) that the production value of the automotive components produced in Australia in each such period by the ACP as original equipment must comprise at least 50% of the production value of all automotive components produced by the ACP; or
 - (b) if the ACP had been registered following the Minister's permission, under section 20, to apply for that registration—that the ACP comply with the conditions relating to ongoing registration specified by the Minister in granting that permission.

32 Ongoing requirement of AMTP registration

The ongoing requirement of registration of an AMTP is:

- (a) unless paragraph (b) applies:
 - (i) that the production value of the automotive machine tools and automotive machine tooling produced by the AMTP in Australia, in each period required under section 34, must be at least \$500,000; and
 - (ii) that at least 50% of that production value must have been for automotive machine tools and automotive machine tooling used to produce original equipment; or
- (b) if the AMTP had been registered following the Minister's permission, under section 20, to apply for that registration—that the AMTP comply with the conditions relating to ongoing registration specified by the Minister in granting that permission.

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33 Ongoing requirement of ASP registration

The ongoing requirement of registration of an ASP is:

- (a) unless paragraph (b) applies:
 - (i) that the production value of automotive services provided by that ASP in Australia, in each period required under section 34, must be at least \$500,000; and
 - (ii) at least 50% of that production value must have been for services related to the production of motor vehicles or original equipment; or
- (b) if the ASP had been registered following the Minister's permission, under section 20, to apply for that registration—that the ASP comply with the conditions relating to ongoing registration specified by the Minister in granting that permission.

34 When do ongoing registration requirements for particular participants need to be met?

- (1) This section applies in relation to a participant, other than a participant who is so registered following the Minister's permission, under section 20, to apply for that registration.
- (2) If the registration of a participant to whom this section applies takes effect on the scheme commencement date, the participant must meet the ongoing registration requirement in respect of that registration in each ACIS year.
- (3) If the registration of a participant to whom this section applies takes effect after the scheme commencement date, the participant must meet the ongoing registration requirement in respect of that registration in each ACIS year following the ACIS year in which the person's registration takes effect.

Note 1: Under section 110, a participant is liable to be deregistered if the participant does not comply with this section.

Note 2: Section 28 sets out when a participant's registration takes effect.

Note 3: Participants registered following the Minister's permission, under section 20, to apply for that registration, are subject to ongoing

registration requirements determined when the Minister granted that permission.

Part 3—The making of returns by participants

35 Participants to make quarterly returns

- (1) Each participant must:
 - (a) within 45 days; or
 - (b) within such longer period as the Secretary, in special circumstances, allows;after the end of each quarter that ends after:
 - (c) the scheme commencement date; or
 - (d) the date that the registration of the person as such a participant has effect;whichever last occurs, provide a return to the Secretary in respect of that quarter.
- (2) Each quarterly return must:
 - (a) be made in writing, in a manner prescribed by the regulations; and
 - (b) be in an approved form.
- (3) A participant who is registered as both an AMTP and an ASP must provide a separate quarterly return in respect of each registration.

36 Contents of MVPs' returns

- An MVP's quarterly return must set out:
- (a) particulars of all MVP production achieved by the MVP in that quarter and the production value of that production; and
 - (b) particulars of the expenditure on eligible investments undertaken by the MVP in that quarter; and
 - (c) if that quarter is the first quarter in respect of which such a return has been provided—particulars of expenditure on eligible investments undertaken by the MVP in respect of each of the quarters preceding that quarter that are relevant quarters; and
 - (d) particulars of the sales value by the MVP in that quarter of:

- (i) motor vehicles, engines and engine components; and
 - (ii) automotive components (other than engines or engine components) and automotive machine tools and automotive machine tooling; and
 - (iii) automotive services; and
- (e) if that quarter is the first quarter in respect of which such a return has been provided—particulars of the sales value by the MVP in the preceding 4 quarters of:
- (i) motor vehicles, engines and engine components; and
 - (ii) automotive components (other than engines or engine components) and automotive machine tools and automotive machine tooling; and
 - (iii) automotive services; and
- (f) particulars of any other Commonwealth assistance within the meaning of section 11 provided in respect of the production referred to in paragraph (a) and the investment referred to in paragraph (b) and, if paragraph (c) is applicable, paragraph (c); and
- (g) any other particulars required by the form.

37 Contents of ACPs' returns

- (1) An ACP's quarterly return must set out:
- (a) particulars of the expenditure on eligible investments undertaken by the ACP in that quarter; and
 - (b) if that quarter is the first quarter in respect of which such a return has been provided—particulars of expenditure on eligible investments undertaken by the ACP in respect of each of the quarters preceding that quarter that are relevant quarters; and
 - (c) particulars of the sales value by the ACP in that quarter of:
 - (i) automotive components, automotive machine tools and automotive machine tooling; and
 - (ii) automotive services; and
 - (d) if that quarter is the first quarter in respect of which such a return has been provided—particulars of the sales value by the ACP in the preceding 4 quarters of:

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- (i) automotive components, automotive machine tools and automotive machine tooling; and
 - (ii) automotive services; and
 - (e) particulars of any other Commonwealth assistance within the meaning of section 11 provided in respect of eligible investments referred to in paragraph (a) and, if paragraph (b) is applicable, paragraph (b); and
 - (f) any other particulars required by the form.
- (2) A return under subsection (1) in respect of the last quarter of an ACIS year must include particulars of the production of automotive components produced by the ACP in that year.

38 Contents of AMTPs' returns

- (1) An AMTP's return must set out:
- (a) particulars of the expenditure on eligible investments undertaken by the AMTP in that quarter; and
 - (b) if that quarter is the first quarter in respect of which such a return has been provided—particulars of expenditure on eligible investments undertaken by the AMTP in respect of each of the quarters preceding that quarter that are relevant quarters; and
 - (c) particulars of the sales value by the AMTP in that quarter of automotive machine tools and automotive machine tooling; and
 - (d) if that quarter is the first quarter in respect of which such a return has been provided—particulars of the sales value by the AMTP in the preceding 4 quarters of automotive machine tools and automotive machine tooling; and
 - (e) particulars of any other Commonwealth assistance within the meaning of section 11 provided in respect of eligible investments referred to in paragraph (a) and, if paragraph (b) is applicable, paragraph (b); and
 - (f) any other particulars required by the form.
- (2) A return under subsection (1) in respect of the last quarter of an ACIS year must include particulars of the production of

automotive machine tools and automotive machine tooling produced by the AMTP in that year.

39 Contents of ASPs' returns

- (1) An ASP's quarterly return must set out:
 - (a) particulars of the expenditure on eligible investments undertaken by the ASP in that quarter; and
 - (b) if that quarter is the first quarter in respect of which such a return has been provided—particulars of expenditure on eligible investments undertaken by the ASP in respect of each of the quarters preceding that quarter that are relevant quarters; and
 - (c) particulars of the sales value by the ASP, in that quarter of automotive services; and
 - (d) if that quarter is the first quarter in respect of which such a return has been provided—particulars of the sales value by the ASP in the preceding 4 quarters of automotive services; and
 - (e) particulars of any other Commonwealth assistance within the meaning of section 11 provided in respect of eligible investments referred to in paragraph (a) and, if paragraph (b) is applicable, paragraph (b); and
 - (f) any other particulars required by the form.
- (2) A return under subsection (1) in respect of the last quarter of an ACIS year must include particulars of automotive services provided by the ASP in that year.

40 Rules concerning returns

- (1) If a participant, in providing a return for a quarter ending after registration other than the final quarter, fails to cover:
 - (a) any particular MVP production achieved (in the case of an MVP); or
 - (b) any particular investment undertaken;by that participant in that quarter, that production or investment may be covered in the return for the quarter next following that

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quarter or, if 2 or more quarters follow that quarter, in either of the 2 quarters next following that quarter.

- (2) If production achieved or investment undertaken by a participant is covered in a later return as provided for in subsection (1), it is to be treated, for all purposes of this Act, as if it were production achieved or investment undertaken in the quarter in which it is reported and not in the quarter in which it was actually achieved or undertaken.
- (3) If production achieved or investment undertaken by a participant is not covered in a later return as provided for in subsection (1), it is to be treated, for all purposes of this Act, as if it had never been achieved or undertaken.
- (4) If a participant, in providing a return in respect of the final quarter, fails to cover any particular:
 - (a) MVP production achieved (in the case of an MVP); or
 - (b) investment undertaken;by that participant in that quarter, that production or investment is to be treated, for all purposes of this Act, as if it had never been achieved or undertaken.
- (5) If a participant makes a return in respect of a particular quarter then, for the purposes of that return:
 - (a) the person is treated as having been in existence for each of the relevant quarters in respect of that quarter whether or not the person was in existence; but
 - (b) the person is treated as having undertaken no eligible investments in each such relevant quarter unless the person in fact undertook such investments in that relevant quarter.

Part 4—Working out unmodulated credit

Division 1—Overview

41 Overview of Part

This Part deals with the working out of unmodulated credit. This is the first step in the process of working out the amount of modulated credit to be issued to participants.

Part 4 Working out unmodulated credit

Division 2 Working out unmodulated production credit and unmodulated investment credit for MVPs

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Division 2—Working out unmodulated production credit and unmodulated investment credit for MVPs

42 Secretary to work out unmodulated production credit for each MVP

- (1) The Secretary must, as soon as practicable after the end of 45 days following each quarter, work out the unmodulated uncapped production credit for each MVP for that quarter in accordance with the formula:

$$A \times B \times 15\%$$

where:

A is the production value of passenger motor vehicles sold in the Australian or New Zealand markets by that MVP in the quarter concerned.

Note: The definition of *production value* refers to *MVP production*. *MVP production* includes production of motor vehicles. A passenger motor vehicle is a motor vehicle for the purposes of ACIS.

B is the general tariff rate applying to imports of passenger motor vehicles at the time the sales described in component A of the formula took place.

- (2) The Secretary must, as soon as practicable after the end of 45 days following the end of each quarter, work out the unmodulated capped production credit for each MVP for that quarter in accordance with the formula:

$$\left[\left(A \times B \times 10\% \right) + \left(C \times B \times 25\% \right) \right] - CA$$

where:

A has the meaning provided in subsection (1).

B has the meaning provided in subsection (1).

C is the production value of MVP production by that MVP in the quarter concerned (other than passenger motor vehicles that are sold in the Australian or New Zealand markets).

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CA is the total amount of other Commonwealth assistance (if any) received by the MVP in relation to the production described in component A of the formula and to the production described in component C of the formula.

43 Secretary to work out unmodulated type A credit for each MVP

The Secretary must, as soon as practicable after the end of 45 days following the end of each quarter, work out the unmodulated investment credit for each MVP for that quarter in relation to type A investment in accordance with the formula:

$$\left[\frac{D + E}{RQ + 1} \times 10\% \right] - CA$$

where:

CA is the total amount of other Commonwealth assistance (if any) received by the MVP in relation to the type A investment referred to in component D of the formula and to the type A investment referred to in component E of the formula.

D is the amount of type A investment undertaken by that MVP in the quarter concerned.

E is the total of type A investment undertaken by that MVP in all relevant quarters preceding that quarter.

RQ is the total number of relevant quarters in relation to that quarter.

44 Secretary to work out unmodulated type B credit for each MVP

The Secretary must, as soon as practicable after the end of 45 days following the end of each quarter, work out the unmodulated investment credit for each MVP for that quarter in relation to type B investment in accordance with the formula:

Part 4 Working out unmodulated credit

Division 2 Working out unmodulated production credit and unmodulated investment credit for MVPs

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$$\left[\frac{F + G}{RQ + 1} \times 25\% \right] - CA$$

where:

CA is the total amount of other Commonwealth assistance (if any) received by the MVP in relation to the type B investment referred to in component F of the formula and to the type B investment referred to in component G of the formula.

F is the amount of type B investment undertaken by that MVP in the quarter concerned.

G is the total of type B investment undertaken by that MVP in all the relevant quarters preceding that quarter.

RQ is the total number of relevant quarters in relation to that quarter.

45 Secretary to work out unmodulated type C credit for each MVP

The Secretary must, as soon as practicable after the end of 45 days following the end of each quarter, work out the unmodulated investment credit for each MVP for that quarter in relation to type C investment in accordance with the formula:

$$\left[\frac{H + J}{RQ + 1} \times 45\% \right] - CA$$

where:

CA is the total amount of other Commonwealth assistance (if any) received by the MVP in relation to the type C investment referred to in component H of the formula and to the type C investment referred to in component J of the formula.

H is the amount of type C investment undertaken by that MVP in the quarter concerned.

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J is the total of type C investment undertaken by that MVP in all the relevant quarters preceding that quarter.

RQ is the total number of relevant quarters in relation to that quarter.

Division 3—Working out unmodulated investment credit for ACPs

46 Secretary to work out unmodulated type D credit for each ACP

The Secretary must, as soon as practicable after the end of 45 days following each quarter, work out the unmodulated investment credit for each ACP for that quarter in relation to type D investment in accordance with the formula:

$$\left[\frac{K + L}{RQ + 1} \times 25\% \right] - CA$$

where:

CA is the total amount of other Commonwealth assistance (if any) received by the ACP in relation to the type D investment referred to in component K of the formula and to the type D investment referred to in component L of the formula.

K is the amount of type D investment by that ACP in the quarter concerned.

L is the total of the type D investment by that ACP in all relevant quarters preceding that quarter.

RQ is the total number of relevant quarters in relation to that quarter.

47 Secretary to work out unmodulated type E credit for each ACP

The Secretary must, as soon as practicable after the end of 45 days following each quarter, work out the unmodulated investment credit for each ACP for that quarter in relation to type E investment in accordance with the formula:

$$\left[\frac{N + P}{RQ + 1} \times 45\% \right] - CA$$

where:

CA is the total amount of other Commonwealth assistance (if any) received by the ACP in relation to the type E investment referred to in component N of the formula and to the type E investment referred to in component P of the formula.

N is the amount of type E investment by that ACP in the quarter concerned.

P is the total of the type E investment by that ACP in all relevant quarters preceding that quarter.

RQ is the total number of relevant quarters in relation to that quarter.

Division 4—Working out unmodulated investment credit for AMTPs

48 Secretary to work out unmodulated type F credit for each AMTP

The Secretary must, as soon as practicable after the end of 45 days following each quarter, work out the unmodulated investment credit for each AMTP for that quarter in relation to type F investment in accordance with the formula:

$$\left[\frac{R + S}{RQ + 1} \times 25\% \right] - CA$$

where:

CA is the total amount of other Commonwealth assistance (if any) received by the AMTP in relation to the type F investment referred to in component R of the formula and to the type F investment referred to in component S of the formula.

R is the amount of type F investment by that AMTP in the quarter concerned.

RQ is the total number of relevant quarters in relation to that quarter.

S is the total of the type F investment by that AMTP in all relevant quarters preceding that quarter.

49 Secretary to work out unmodulated type G credit for each AMTP

The Secretary must, as soon as practicable after the end of 45 days following each quarter, work out the unmodulated investment credit for each AMTP for that quarter in relation to type G investment in accordance with the formula:

$$\left[\frac{U + V}{RQ + 1} \times 45\% \right] - CA$$

where:

CA is the total amount of other Commonwealth assistance (if any) received by the AMTP in relation to the type G investment referred to in component U of the formula and to the type G investment referred to in component V of the formula.

RQ is the total number of relevant quarters in relation to that quarter.

U is the amount of type G investment by that AMTP in the quarter concerned.

V is the total of the type G investment by that AMTP in all relevant quarters preceding that quarter.

Division 5—Working out unmodulated investment credit for ASPs

50 Secretary to work out unmodulated type H credit for each ASP

The Secretary must, as soon as practicable after the end of 45 days following each quarter, work out the unmodulated investment credit for each ASP for that quarter in relation to type H investment in accordance with the formula:

$$\left[\frac{X + Y}{RQ + 1} \times 25\% \right] - CA$$

where:

CA is the total amount of other Commonwealth assistance (if any) received by the ASP in relation to the type H investment referred to in component X of the formula and to the type H investment referred to in component Y of the formula.

RQ is the total number of relevant quarters in relation to that quarter.

X is the amount of type H investment by that ASP in the quarter concerned.

Y is the total of the type H investment by that ASP in all relevant quarters preceding that quarter.

51 Secretary to work out unmodulated type I credit for each ASP

The Secretary must, as soon as practicable after the end of 45 days following each quarter, work out the unmodulated investment credit for each ASP for that quarter in relation to type I investment in accordance with the formula:

$$\left[\frac{ZA + ZB}{RQ + 1} \times 45\% \right] - CA$$

where:

CA is the total amount of other Commonwealth assistance (if any) received by the ASP in relation to the type I investment referred to in component **ZA** of the formula and to the type I investment referred to in component **ZB** of the formula.

RQ is the total number of relevant quarters in relation to that quarter.

ZA is the amount of type I investment by that ASP in the quarter concerned.

ZB is the total of the type I investment by that ASP in all relevant quarters preceding that quarter.

Part 5—Modulation of unmodulated credit

Division 1—Overview

52 Overview of Part

- (1) This Part deals with the modulation process. In this process, unmodulated credits are modulated and the amount of modulated credit to be issued to participants is worked out.
- (2) Division 2 sets out caps on the scheme and each participant. These caps are taken into account in the modulation process.
- (3) Division 3 provides for the making by the Minister of modulation guidelines under which modulation takes place.
- (4) Division 4 deals with the modulation process for MVPs.
- (5) Division 5 deals with the modulation process for ACPs, AMTPs and ASPs.

Division 2—Caps on scheme and participants

53 \$2,000,000,000 cap on ACIS

- (1) The Secretary must not enter in the ACIS ledger amounts in respect of modulated capped production credit and modulated investment credit that in total exceed \$2,000,000,000.
- (2) In determining amounts to be entered in the ledger under subsection (1), particular amounts received, or likely to be received, by the Commonwealth by way of liability imposed under the *ACIS (Unearned Credit Liability) Act 1999* (including amounts received, or likely to be received, as offsets of particular duty credit against this liability) must be taken into account.

54 5% of sales cap on participants

5% of sales value cap on participants to whom paragraph 16(1)(a), 17(1)(a) or (2)(a), 18(1)(a) or 19(1)(a) applied

- (1) If a participant to whom paragraph 16(1)(a), 17(1)(a) or (2)(a), 18(1)(a) or 19(1)(a) applied is granted registration, then, at the end of each ACIS year, the total of the modulated credit issued to the participant must not exceed 5% of the sales value of the participant's ACIS goods and services in respect of the year preceding the first-mentioned year.

5% of sales cap on participants to whom paragraph 16(1)(b) or (c), 17(1)(b) or (c) or (2)(b) or (c), 18(1)(b) or (c) or 19(1)(b) or (c) applied

- (2) If a participant to whom paragraph 16(1)(b) or (c), 17(1)(b) or (c) or (2)(b) or (c), 18(1)(b) or (c) or 19(1)(b) or (c) applied is granted registration, then, at the end of the ACIS year in which the registration took effect, the total of the modulated credit issued to the participant must not exceed 5% of the sales value of the participant's ACIS goods and services in respect of that year.

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5% of sales cap on certain participants in second year of registration

- (3) At the end of each ACIS year following the ACIS year in which the registration of the participant referred to in subsection (2) took effect, the total of the modulated credit issued to the participant must not exceed 5% of the sales value of the participant's ACIS goods and services in respect of the year preceding the first-mentioned year.

Meaning of sales value of ACIS goods and services

- (4) In this section, a reference to the *sales value of ACIS goods and services* of a participant is a reference to the sales value of the goods or services provided by that participant as a result of activities that:
- (a) earned; or
 - (b) but for the operation of this section, would have earned; the participant duty credit.

Division 3—Guidelines for modulation

55 Minister must make modulation guidelines

- (1) The Minister must make guidelines setting out the way in which the following kinds of credit are to be modulated:
 - (a) unmodulated uncapped production credit;
 - (b) unmodulated capped production credit;
 - (c) unmodulated investment credit.
- (2) In making guidelines for the purposes of subsection (1), the Minister must:
 - (a) have regard to Australia's international obligations under the WTO Agreement on Subsidies and Countervailing Measures; and
 - (b) ensure that the \$2,000,000,000 cap on ACIS (see section 53) is not exceeded; and
 - (c) ensure that, in respect of any ACIS year, the 5% of sales cap on individual participants (see section 54) is not exceeded.
- (3) Guidelines made for the purposes of subsection (1) are disallowable instruments within the meaning of section 46A of the *Acts Interpretation Act 1901*.

Division 4—MVP credit

56 Secretary to modulate production credit for each MVP

When the Secretary has worked out:

- (a) the unmodulated uncapped production credit (if any); and
- (b) the unmodulated capped production credit (if any);

in relation to each MVP and a particular quarter, the Secretary must modulate each kind of unmodulated production credit to work out the modulated uncapped production credit and modulated capped production credit to be issued to each MVP.

57 Secretary to modulate investment credit for each MVP

When the Secretary has worked out the unmodulated investment credit, in relation to each MVP and a particular quarter, in respect of eligible investments, the Secretary must modulate each unmodulated investment credit to work out the modulated investment credit to be issued to each MVP.

58 Secretary must modulate in accordance with Ministerial guidelines

The Secretary must conduct each modulation required under this Division in the manner set out in guidelines made under section 55.

Division 5—ACP, AMTP and ASP credit

59 Secretary to modulate investment credit for each ACP, AMTP and ASP

When the Secretary has worked out the unmodulated investment credit in relation to each ACP, AMTP and ASP and a particular quarter, in respect of eligible investments, the Secretary must modulate each unmodulated investment credit to work out the modulated investment credit to be issued to each ACP, AMTP or ASP, as the case requires.

60 Secretary must modulate in accordance with Ministerial guidelines

The Secretary must conduct each modulation required under this Division in the manner set out in guidelines made under section 55.

Part 6—The ACIS ledger and its maintenance

Division 1—Overview

61 Overview of Part

- (1) This Part deals with the ACIS ledger and its maintenance. Once modulated credit has been worked out by the Secretary, the Secretary issues the credit by entering it in the ledger. Credit so entered in the ledger is duty credit.
- (2) Division 2 deals with the establishment of the ledger and the making of entries in it.
- (3) Division 3 provides for the time in which entries may be made in the ledger.
- (4) Division 4 provides for the liability of the Secretary for ledger entries.

Division 2—Establishment and maintenance of the ledger

62 Establishment and maintenance of ACIS ledger

- (1) The Secretary must establish and maintain a ledger, to be known as the ACIS ledger.
- (2) The ledger may be kept in an electronic form.

63 Information to be kept in ledger

The ACIS ledger is to be a record of the modulated credit that a person owns either:

- (a) because the credit was issued to the person; or
- (b) because the credit was transferred to the person.

64 Entry of modulated credit in the ledger

- (1) After working out, under section 56, the modulated capped or uncapped MVP production credit (if any) that is to be issued to an MVP, the Secretary must enter the modulated credit of that kind in the ACIS ledger in respect of the MVP.
- (2) After working out, under section 57, the modulated investment credit (if any) that is to be issued to an MVP, the Secretary must enter the credit in the ledger in respect of the MVP.
- (3) After working out, under section 59, the modulated investment credit (if any) that is to be issued to an ACP, AMTP or ASP, the Secretary must enter the credit in the ledger in respect of the ACP, AMTP or ASP.

65 Effect of entering modulated credit in the ledger

When the Secretary enters in the ACIS ledger modulated credit worked out under section 56, 57 or 59 in respect of a participant, the credit is issued to the person as a duty credit.

Section 66

66 Circumstances in which the Secretary must amend the ledger

The Secretary must amend the ACIS ledger in respect of a person and the person's duty credit in the following circumstances:

- (a) when the person applies duty credit in respect of the importation of eligible imports;
- (b) when the Secretary applies duty credit under Part 9 to offset an unearned credit liability that the person has;
- (c) when the person transfers duty credit to another person;
- (d) to give effect to a decision of the Administrative Appeals Tribunal or of a court concerning the person;
- (e) if the Secretary determines that there is an error in the ledger in respect of the person.

67 Ledger to show balance of credit

The Secretary, in making an entry in the ACIS ledger because of a circumstance set out in section 64 or 66, must ensure that the ledger shows the correct balance of duty credit and the reason why the entry was made.

68 Person may apply to Secretary to fix an error in ledger

- (1) If a person believes that there is an error in the ACIS ledger in respect of themselves, the person may apply to the Secretary to amend the ledger.
- (2) The application:
 - (a) must be in writing; and
 - (b) specify the entry that the person believes contains an error; and
 - (c) specify the reasons that the person believes that there is such an error; and
 - (d) specify the amendment to the ledger that the person believes should be made to correct the alleged error.

69 Electronic access to ledger

- (1) If the Secretary keeps the ACIS ledger in an electronic form, the Secretary may make provision for persons who own duty credit to have electronic access to the ledger.
- (2) In making such provision, the Secretary must ensure that a person may only access the part of the ledger that relates to that person.

70 Secretary to notify owner of credit quarterly of changes to ledger

- (1) The Secretary must, within 7 days after a modulation day in respect of a quarter, send to each person who owns or owned duty credit during that quarter a notice setting out the entries made in the ledger in respect of the person in the quarter.
- (2) In this section, *modulation day*, in respect of a quarter, means the day that the Secretary enters modulated credit in the ledger under sections 56, 57 and 59 in respect of the quarter.

Part 6 The ACIS ledger and its maintenance

Division 3 Period in which entries in ledger to be made

Section 71

Division 3—Period in which entries in ledger to be made

71 Time in which entries to be made

The Secretary may amend the ACIS ledger at any time.

72 Secretary does not have to amend the ledger after 31 December 2006

Despite sections 64 and 66, the Secretary does not have to amend the ACIS ledger after 31 December 2006.

Division 4—No liability for ledger entries

73 Secretary not liable in certain circumstances

The Secretary is not liable to an action, suit or proceeding for, or in respect of, an act or thing in good faith done or omitted to be done in the exercise or purported exercise of any power under this Part.

Part 7 Dealing in and use of duty credit

Division 1 Overview

Section 74

Part 7—Dealing in and use of duty credit

Division 1—Overview

74 Overview of Part

This Part provides that duty credit:

- (a) is transferable; and
- (b) may be subject to limited use restrictions (sections 76 and 77).

Division 2—Transfer of credit

75 Duty credit transferable

- (1) A person entered in the ACIS ledger as a person who owns duty credit may transfer that credit to another person.
- (2) The parties to the transfer of duty credit must notify the Secretary of the transfer by lodging a notification with the Secretary in a manner specified in the regulations.
- (3) The notification must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) contain such information as the form requires; and
 - (d) be signed in the manner indicated in the form.
- (4) Transferred duty credit is not available to the transferee until the Secretary has adjusted the ledger so as to:
 - (a) remove that credit from the duty credit balance available to the transferor; and
 - (b) enter that credit as duty credit available to the transferee.
- (5) If duty credit is transferred and the ledger amended accordingly, that transfer is not affected if the Secretary subsequently determines that the transferor was not entitled to all or any of the credit that has been so transferred.

Division 3—Minister may limit use of credit in certain circumstances

76 Minister may limit use of modulated ACP, AMTP or ASP investment credit

- (1) The Minister may, by notice in writing, declare that, with effect from the date of publication of that notice:
 - (a) any duty credit that is modulated ACP, AMTP or ASP investment credit in the ACIS ledger on that date; or
 - (b) any modulated ACP, AMTP or ASP investment credit entered in the ledger after that date;may only be used:
 - (c) as credit in respect of motor vehicles entered under item 41E of Schedule 4 to the Tariff; or
 - (d) as a set-off against a liability under the *ACIS (Unearned Credit Liability) Act 1999*.
- (2) If the Minister makes a declaration, any duty credit to which it applies can only be used as specified in the declaration.
- (3) The Minister's notice must be tabled in both Houses of Parliament within 15 sitting days after the day on which the notice was made.

77 Minister may limit use of certain production credit

- (1) The Minister may, by notice in writing, declare that, with effect from the date of publication of that notice:
 - (a) any duty credit that is modulated capped production credit in the ACIS ledger on that date; or
 - (b) any modulated capped production credit entered in the ledger after that date;may only be used:
 - (c) as credit in respect of motor vehicles entered under item 41E of Schedule 4 to the Tariff; or
 - (d) as a set-off against a liability under the *ACIS (Unearned Credit Liability) Act 1999*.

- (2) If the Minister makes a declaration, any duty credit to which it applies can only be used as specified in the declaration.
- (3) The Minister's notice must be tabled in both Houses of Parliament within 15 sitting days after the day on which the notice was made.

Part 8—Audit

Division 1—Overview

78 Overview of Part

- (1) This Part provides a regime for the audit of the affairs of participants in so far as they relate to ACIS.
- (2) Division 2 provides for the appointment of authorised officers to undertake audit functions and for the issue of identification for such persons.
- (3) Division 3 sets out the powers of authorised officers and Division 4 sets out the obligations imposed on authorised officers in the exercise of those powers.
- (4) Division 5 deals with an occupier's rights and responsibilities in circumstances where an authorised officer seeks to exercise audit powers.
- (5) Division 6 deals with the procedure for obtaining and the nature of monitoring warrants.

Division 2—Appointment of authorised officers and identity cards

79 Appointment of authorised officers

- (1) The Secretary may, in writing, appoint:
 - (a) an officer or employee of the Department; or
 - (b) any other person;to be an authorised officer for the purposes of this Part.
- (2) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the Secretary.

80 Identity cards

- (1) The Secretary must issue an identity card to an authorised officer in the form prescribed by the regulations. The identity card must contain a recent photograph of the authorised officer.
- (2) A person is guilty of an offence if:
 - (a) the person has been issued with an identity card; and
 - (b) the person ceases to be an authorised officer; and
 - (c) the person does not, immediately after so ceasing, return the identity card to the Secretary.

Maximum penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

Division 3—Powers of authorised officer

Subdivision A—Monitoring powers

81 Authorised officer may enter premises by consent or under monitoring warrant to check information provided under ACIS or to check compliance with the Act

- (1) For the purposes of substantiating information provided under ACIS or of determining whether this Act has been complied with, an authorised officer may:
 - (a) enter any premises at any reasonable time of the day; and
 - (b) exercise the monitoring powers set out in section 82.
- (2) An authorised officer is not authorised to enter premises under subsection (1) unless:
 - (a) the premises are business premises, the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or
 - (b) the entry is made under a monitoring warrant.
- (3) If an authorised officer is on the premises with the consent of the occupier, the authorised officer must leave the premises if the occupier asks the authorised officer to do so.

82 Monitoring powers of authorised officers

- (1) For the purposes of this Part, the following are the monitoring powers that an authorised officer may exercise in relation to premises under section 81:
 - (a) the power to search the premises for any thing on the premises that may relate to ACIS;
 - (b) the power to examine any activity conducted on the premises that may relate to information provided for the purposes of ACIS;
 - (c) the power to examine any thing on the premises that may relate to information provided for the purposes of ACIS;

- (d) the power to take photographs or make video or audio recordings or sketches on the premises of any such activity or thing;
 - (e) the power to inspect any document on the premises that may relate to information provided for the purposes of ACIS;
 - (f) the power to take extracts from, or make copies of, any such document;
 - (g) the power to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;
 - (h) the power to secure a thing that:
 - (i) is found during the exercise of monitoring powers on the premises; and
 - (ii) an authorised officer believes on reasonable grounds affords evidence of the commission of an offence against this Act or the *Crimes Act 1914*;until a warrant is obtained to seize the thing;
 - (i) the powers in subsections (2) and (3).
- (2) For the purposes of this Part, **monitoring powers** include the power to operate equipment at premises to see whether:
- (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is at the premises; and
 - (ii) can be used with the equipment or is associated with it;contains information that is relevant to assessing the correctness of information provided under ACIS.
- (3) For the purposes of this Part, **monitoring powers** include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
- (a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;
 - (b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power;or

Section 83

- (ii) is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;
- (c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in exercise of the power under paragraph (b).

Subdivision B—Power of authorised officer to ask questions and seek production in certain circumstances

83 Authorised officer may request persons to answer questions

- (1) If the authorised officer was only authorised to enter premises because the occupier of the premises consented to the entry—the authorised officer may ask the occupier to:
 - (a) answer any questions related to the operation of ACIS that are put by the authorised officer; and
 - (b) produce any document requested by the authorised officer that is so related.
- (2) If the authorised officer was authorised to enter the premises by a monitoring warrant—the authorised officer has power to require any person in or on the premises to:
 - (a) answer any questions related to the operation of ACIS that are put by the authorised officer; and
 - (b) produce any document requested by the authorised officer that is so related.
- (3) A person is guilty of an offence if the person refuses or fails to comply with a requirement under subsection (2).

Maximum penalty: 6 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (4) A person is excused from complying with a requirement of subsection (2) if the answer to the question or the production of the document might tend to incriminate the person or expose the person to a penalty.

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Note: A defendant bears an evidential burden in relation to the matter in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) A person is guilty of an offence if the person:
- (a) gives information to an authorised officer, either orally or in writing; and
 - (b) gives the information knowing that it is false or misleading in a material particular.

Maximum penalty: 12 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Division 4—Obligations and incidental powers of authorised officers

84 Authorised officer must produce identity card on request

An authorised officer is not entitled to exercise any powers under this Part in relation to premises if:

- (a) the occupier of the premises requires the authorised officer to produce his or her identity card for inspection by the occupier; and
- (b) the authorised officer fails to comply with the requirement.

85 Consent

- (1) Before obtaining the consent of a person for the purposes of paragraph 81(2)(a), the authorised officer must inform the person that he or she may refuse consent.
- (2) An entry of an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

86 Announcement before entry

An authorised officer executing a monitoring warrant must, before entering premises under the warrant:

- (a) announce that he or she is authorised to enter the premises; and
- (b) give any person at the premises an opportunity to allow entry to the premises.

87 Details of monitoring warrant to be given to occupier etc. before entry

- (1) If a monitoring warrant is being executed and the occupier of the premises in respect of which it is being executed or another person who apparently represents the occupier is present at the premises,

the authorised officer must make available to that person a copy of the warrant.

- (2) The authorised officer must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

Note: Monitoring warrants are issued under section 92.

88 Use of electronic equipment in exercising monitoring powers

- (1) An authorised officer or a person assisting that officer may operate electronic equipment already at premises in order to exercise monitoring powers if he or she believes, on reasonable grounds, that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the authorised officer or a person assisting believes, on reasonable grounds, that:
 - (a) there is on the premises material relating to information supplied under ACIS that may be accessible by operating electronic equipment on the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard, or otherwise.
- (3) The authorised officer or a person assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (4) The equipment may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert;whichever first happens.

Part 8 Audit

Division 4 Obligations and incidental powers of authorised officers

Section 89

- (5) If an authorised officer or a person assisting believes, on reasonable grounds, that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of the period.
- (6) The authorised officer or a person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension and the occupier is entitled to be heard in relation to that application.
- (7) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (8) In this section:
premises means:
 - (a) premises that an authorised officer has entered, and remains on, with the consent of the occupier; and
 - (b) warrant premises.

89 Compensation for damage to electronic equipment

- (1) If:
 - (a) damage is caused to equipment as a result of it being operated as mentioned in section 88; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had

provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

Division 5—Occupier's rights and responsibilities

90 Occupier entitled to be present during execution of monitoring warrant

- (1) If a monitoring warrant is being executed and the occupier of the warrant premises, or another person who apparently represents the occupier, is present at the premises, the person is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

91 Occupier to provide authorised officer with all facilities and assistance

- (1) The occupier of warrant premises, or another person who apparently represents the occupier, must provide the officer executing the warrant and any person assisting that officer with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person is guilty of an offence if the person fails to comply with the obligation set out in subsection (1).

Maximum penalty: 10 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Division 6—Warrants

92 Monitoring warrants

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purposes of substantiating information provided under ACIS or of determining whether this Act has been complied with.
- (3) The magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
 - (a) authorise one or more authorised officers (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 82 in relation to the premises; and
 - (b) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
 - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

Part 9—Unearned duty credit

Division 1—Overview

93 Overview of Part

- (1) This Part provides for duty credit to which a person is not entitled to be recovered.
- (2) Division 2 sets out the circumstances in which an unearned credit liability arises (section 94) and contains provisions concerning the amount of a liability.
- (3) To facilitate recovery of unearned credit liability, Division 3 provides for the offsetting of a person's duty credit against unearned credit liability.
- (4) Division 4 contains provisions concerning the time for payment of unearned credit liability, a late payment penalty and extensions of time for payment.
- (5) Division 5 allows the regulations to deal with other matters concerning unearned credit liability.

Division 2—Unearned credit liability

94 Person not entitled to certain duty credit

- (1) A person who has or had duty credit is not entitled to the credit if the person received the credit for any of the following reasons:
 - (a) because of the making of an error in calculating the duty credit (including during the modulation process) or a mistake of fact;
 - (b) because information given to the Minister, the Secretary or a delegate of the Secretary was inaccurate or incomplete;
 - (c) because of a clerical error or mistake in the ledger;
 - (d) because the credit:
 - (i) was entered in respect of a transaction to which the person was a party that was not at arm's length within the meaning of section 9; and
 - (ii) is referable to a production value, sales value or investment to which the transaction relates that has not been determined as if the parties were at arm's length.
- (2) If:
 - (a) a person has or had certain duty credit; and
 - (b) an authorised officer, under section 83, asks the person:
 - (i) to answer a question in relation to the duty credit; or
 - (ii) within the period provided for in section 108 (document retention obligations), to produce a document relating to the duty credit; and
 - (c) the person does not answer the question or produce the document when asked to;the person is not entitled to the duty credit.

95 Unearned credit liability

If the Secretary determines that, because of a situation set out in section 94, a person is not entitled to certain duty credit, the person is liable to pay to the Commonwealth an unearned credit liability.

Part 9 Unearned duty credit

Division 2 Unearned credit liability

Section 96

96 Amount of unearned credit liability

The amount of an unearned credit liability of a person is an amount equal to the amount of duty credit to which the person is not entitled.

Division 3—Offsetting of duty credit against unearned credit liability

97 Duty credit to be offset against liability

If:

- (a) a person is liable to pay to the Commonwealth an unearned credit liability in respect of duty credit of a particular kind; and
- (b) the person has duty credit;

the duty credit is to be offset against the liability as provided for in sections 98 and 99.

98 Offsetting of duty credit of the same kind

If:

- (a) a person is liable to pay to the Commonwealth an unearned credit liability in respect of duty credit of a particular kind; and
- (b) the person has a balance of duty credit of the same kind as the liability;

the balance is to be offset against the liability.

99 Offsetting of other kinds of duty credit

If:

- (a) a person is liable to pay to the Commonwealth an unearned credit liability, or a part of such a liability, in respect of duty credit of a particular kind; and
- (b) the person:
 - (i) does not have any duty credit of that kind; or
 - (ii) does not have sufficient duty credit of that kind to fully offset the liability; but

- (c) the person has a balance of duty credit of a different kind; the balance is to be offset against the liability in the order set out in section 100.

Section 100

100 Order in which credit to be offset

For the purposes of section 99, the duty credit of a person who is liable to pay an unearned credit liability is to be offset as follows:

- (a) first, offset so much of the duty credit that is modulated capped production credit (if any);
- (b) next, offset so much of the duty credit that is modulated ACP, AMTP or ASP investment credit (if any);
- (c) next, offset so much of the duty credit that is modulated MVP investment credit (if any);
- (d) next, offset so much of the duty credit that is modulated uncapped production credit (if any).

101 Amount of unearned credit liability outstanding

So much of the person's liability that has not been offset under sections 98 and 99 is the amount of unearned credit liability outstanding under this section.

102 Secretary to issue notice

If the Secretary determines that there is an unearned credit liability in respect of a person, the Secretary must give the person a notice in writing setting out the following matters:

- (a) the amount of the person's unearned credit liability;
- (b) if any duty credit of the person has been offset against the liability—the amount and kind of credit offset;
- (c) the unearned credit liability outstanding under section 101 (if any) that the participant is liable to pay.

Division 4—Time for payment of unearned credit liability

103 Time for payment of unearned credit liability

An amount of unearned credit liability that is outstanding under section 101 is payable to the Commonwealth within 30 days after the issue of the Secretary's notice under section 102.

104 Late payment penalty

If an amount of unearned credit liability remains unpaid after the time for payment of the liability, the person liable to pay the liability is liable to pay to the Commonwealth a late payment penalty calculated from that time at the rate of 20% per year on the amount unpaid.

105 Extension of time for payment of unearned credit liability

- (1) The Secretary may, in a particular case, extend the time for payment of unearned credit liability outstanding under section 101.
- (2) The following provisions apply in relation to extensions of time under subsection (1):
 - (a) the person liable to pay the liability may apply for an extension;
 - (b) an application is to be in writing, setting out the reasons for the application, and it is to be made to the Secretary;
 - (c) the Secretary's decision on the application is to be in writing.

106 Recovery of unearned credit liability and late payment penalty

An amount of unearned credit liability outstanding under section 101 or late payment penalty is recoverable by the Commonwealth as a debt due to the Commonwealth.

Division 5—Regulations concerning unearned duty credit

107 Regulations may deal with other matters

- (1) The regulations may include other provisions dealing with the collection and recovery of an amount of unearned credit liability or late payment penalty, including (but not limited to) provisions dealing with the following:
 - (a) the methods by which an amount of unearned credit liability and late payment penalty may be paid;
 - (b) refund, or overpayments of, unearned credit liability or late payment penalty;
 - (c) as an alternative to the refund of the whole or a part of an amount to a person, crediting the amount or part of the amount against a liability of the person to pay unearned credit liability or late payment penalty;
 - (d) forms to be used, and information to be provided, in relation to the payment of liability and late payment penalty.
- (2) The matters that may be covered in the regulations made for the purposes of paragraph (1)(a) include, but are not limited to, the making of payments using:
 - (a) electronic funds transfer systems; or
 - (b) cheques.
- (3) A refund of an amount in accordance with the regulations is to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

Part 10—Obligations relating to documents

108 Document retention obligations

- (1) A person who is or has been a participant must maintain, or create and maintain, documents that evidence all the particulars contained in each quarterly return provided by the person.
- (2) The documents must be maintained by the person for 5 years after the lodging of the return concerned.
- (3) If the person is required:
 - (a) by a law of the Commonwealth, of a State or a Territory; or
 - (b) in accordance with ordinary commercial practice;to give to another person a document required to be maintained under subsection (1), the first-mentioned person is taken to have complied with the requirements under that subsection if, after the giving of the document to that other person, the first-mentioned person maintains a true copy of the documents certified in accordance with subsection (4) for the period that the document would be required to be maintained under subsection (2).
- (4) The person may certify a true copy of the document for the purposes of subsection (3), as the case requires, by attaching to the copy a certificate signed by the person:
 - (a) stating that the copy is a true copy of the original document; and
 - (b) stating that the original document has been given to another person for a reason set out in that subsection; and
 - (c) providing particulars of that reason.

109 Update of business plan

- (1) A participant must provide the Secretary with an update of the business plan provided by the participant with the participant's application for registration under ACIS.

Section 109

- (2) The first update after a participant's registration takes effect must be provided on, or as soon as practicable after:
 - (a) if the participant's registration has effect for less than 2 months before a 31 October—the second 31 October following the date the participant's registration took effect; or
 - (b) in any other case— the first 31 October following the date that the participant's registration took effect.
- (3) Later updates must be provided on, or as soon as practicable after, each subsequent 31 October occurring before 1 January 2005.
- (4) Each update must cover the period from 1 January of the year next following the 31 October after which it is to be provided to 31 December 2005.

Part 11—Deregistration

110 Deregistration

- (1) The reasons for deregistration are set out in subsections (2), (4) and (5).
- (2) The Secretary may, at any time, deregister a participant if:
 - (a) the Secretary is satisfied that the participant is not likely, or has failed, to comply with the ongoing registration requirement in section 30, 31, 32 or 33; or
 - (b) the Secretary is satisfied that, were the participant to be applying for registration at that time, the participant would not be a fit and proper person within the meaning of section 29; or
 - (c) the participant asks the Secretary to be deregistered as such a participant; or
 - (d) the participant fails to comply with the document retention obligations set out in section 108.

Note: The meaning of *fit and proper* is extended, so far as a group is concerned, because of the operation of section 22.

- (3) In determining whether or not, if a participant were applying for registration at a particular time, the participant would or would not be a fit and proper person within the meaning of section 29, that section has effect as if a misleading statement made in a quarterly return were a misleading statement made in the application for registration.
- (4) The Secretary may deregister an MVP, ACP, AMTP or ASP who fails for more than 6 months to comply with the requirement in section 109 to provide an update of the business plan provided in relation to their application for registration as such an MVP, ACP, AMTP or ASP.
- (5) The Secretary may deregister a participant if:

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- (a) the participant is registered on the basis that in the 12 months following the application for registration as such a participant:
 - (i) in the case of an MVP—the MVP is likely to do the things set out in paragraph 16(1)(b); or
 - (ii) in the case of an ACP (other than a group of related companies)—the ACP is likely to do the things set out in subparagraph 17(1)(b)(i) or (ii); or
 - (iii) in the case of an ACP comprised of a group of related companies—the ACP is likely to do the things set out in subparagraph 17(2)(b)(i) or (ii); or
 - (iv) in the case of an AMTP—the AMTP is likely to do the things set out in subparagraph 18(1)(b)(i) or (ii); or
 - (v) in the case of an ASP—the ASP is likely to do the things set out in subparagraph 19(1)(b)(i) or (ii); and
- (b) at any time during the 12 months following the application the Secretary determines that it is unlikely that the participant will be able to do those things.

Part 12—Administrative review of certain decisions**111 Review of decisions affecting duty credit**

Applications may be made to the Administrative Appeals Tribunal for the review of decisions of the following kinds:

- (a) a decision by the Secretary under guidelines made under paragraph 9(3)(a) that a person was a party to a transaction that was not at arm's length within the meaning of that section;
- (b) a decision by the Secretary under guidelines made under paragraph 9(3)(b) as to the production value or sales value of the motor vehicles, engines, or engine components to which a transaction that has been determined as not being at arm's length relates;
- (c) a decision by the Secretary under guidelines made under paragraph 9(3)(c) as to the production value or sales value of the goods or services to which a transaction that has been determined as not being at arm's length relates;
- (d) a decision by the Secretary under guidelines made under paragraph 9(3)(d) as to the amount of investment in plant and equipment services to which a transaction that has been determined as not being at arm's length relates;
- (e) a decision by the Secretary under guidelines made under paragraph 9(3)(e) as to the amount of investment in research and development to which a transaction that has been determined as not being at arm's length relates;
- (f) a decision by the Secretary under guidelines made under section 10 as to whether an ACIS participant is entitled to duty credit;
- (g) a decision by the Secretary under section 56:
 - (i) not to issue an MVP with modulated capped or modulated uncapped production credit; or
 - (ii) as to the amount of any credit to be so issued;
- (h) a decision by the Secretary under section 57:

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- (i) not to issue an MVP with modulated investment credit;
or
- (ii) as to the amount of any credit to be so issued;
- (i) a decision by the Secretary under section 59:
 - (i) not to issue an ACP, AMTP or ASP with modulated investment credit; or
 - (ii) as to the amount of any credit to be so issued.

112 Limitations on implementation of Federal Court decisions concerning duty credit decisions

- (1) If, in respect of a decision (the *original decision*) set out in section 111:
 - (a) application is made for review of the original decision to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* or section 39B of the *Judiciary Act 1903*; and
 - (b) the Federal Court makes a decision in favour of the applicant for review;the limitations set out in the following subsections apply to the implementation of the Federal Court's decision concerning the original decision.
- (2) The Federal Court's decision has effect on and from the day that the Court made its decision and not before that date.
- (3) If:
 - (a) the applicant for review is a participant at the time that the Federal Court's decision concerning his or her application is made; and
 - (b) the Federal Court's decision would result in the applicant being issued with an increased amount of modulated capped production credit or modulated investment credit;the Federal Court's decision can only be given effect to if the \$2,000,000,000 cap on ACIS (section 53) has not been reached.
- (4) If the applicant for review is a participant at the time that the Federal Court's decision concerning his or her application is made:

- (a) the decision can only be given effect to if the applicant's personal 5% cap on sales (section 54) in respect of the ACIS year in which the Federal Court decision was made has not been reached; and
- (b) if the cap has not been reached, the decision can only be given effect to to the extent of the 5% cap.

113 Limitations on implementation of AAT decisions concerning duty credit decisions

- (1) If, in respect of a decision (the *original decision*) set out in section 111:

- (a) application is made for review of the original decision to the Administrative Appeals Tribunal (AAT); and
- (b) the AAT makes a decision in favour of the applicant for review;

the limitations set out in the following subsections apply to the implementation of the AAT's decision concerning the original decision.

- (2) Despite subsection 43(6) of the *Administrative Appeals Tribunal Act 1975*, the AAT's decision has effect on and from the day that the AAT made its decision and not before that date.

- (3) If:

- (a) the applicant for review is a participant at the time that the AAT's decision concerning his or her application is made; and
- (b) the AAT's decision would result in the applicant being issued with an increased amount of modulated capped production credit or modulated investment credit;

the AAT's decision can only be given effect to if the \$2,000,000,000 cap on ACIS (section 53) has not been reached.

- (4) If the applicant for review is a participant at the time that the AAT's decision concerning his or her application is made:

- (a) the decision can only be given effect to if the applicant's personal 5% cap on sales (section 54) in respect of the ACIS

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year in which the AAT decision was made has not been reached; and

- (b) if the cap has not been reached, the decision can only be given effect to to the extent of the 5% cap.

114 Review of other decisions

Applications may be made to the Administrative Appeals Tribunal for the review of decisions of the following kinds:

- (a) a decision by the Secretary under section 21 to refuse permission to a group of companies to seek registration as a participant as if it were a single person;
- (b) a decision by the Secretary under subsection 21(6) to impose conditions on the grant of permission to a group of companies to seek registration as a participant as if it were a single person;
- (c) a decision by the Secretary under section 26 to refuse to register a person as an MVP, an ACP, an AMTP or an ASP;
- (d) a decision by the Secretary under section 29 that a person is not a fit and proper person;
- (e) a decision by the Secretary under paragraph 66(e) that there is an error in the ledger;
- (f) a decision by the Secretary under section 68:
 - (i) to refuse to amend the ledger; or
 - (ii) to amend the ledger differently to the way specified in the application made under subsection 68(2);
- (g) a decision by the Secretary under subsection 110(2) to deregister a participant;
- (h) a decision by the Secretary under subsection 110(4) to deregister a participant;
- (i) a decision by the Secretary under subsection 110(5) to deregister a participant;
- (j) a decision by the Secretary under section 95 that a person has an unearned credit liability;
- (k) a decision by the Secretary under section 101 that a person has an amount of unearned credit liability outstanding;
- (l) a decision by the Secretary under section 105:

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- (i) to refuse an application for an extension of time for the payment of unearned credit liability outstanding under section 101; or
- (ii) to grant a lesser extension than that applied for.

Part 13—Administration of Act

115 Secretary may delegate powers

- (1) The Secretary may, by signed writing, delegate to an SES officer (within the meaning of the *Public Service Act 1922*) in the Department all or any of the Secretary's powers under this Act.
- (2) The Secretary may, by signed writing, delegate to the Chief Executive Officer of the Australian Customs Service the power to amend the ledger under paragraph 66(a) (when duty credit is applied by a person in respect of the importation of eligible imports).
- (3) If the Secretary delegates a power mentioned in subsection (2) to the Chief Executive Officer of the Australian Customs Service, the Chief Executive Officer may, by writing, sub-delegate the power to an officer of Customs (within the meaning of the *Customs Act 1901*).
- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to the sub-delegation in a corresponding way to the way in which they apply to a delegation.

116 Regulations

The Governor General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Consequential amendments

Customs Act 1901

1 Subsection 163(2)

Repeal the subsection, substitute:

- (2) For the purposes of this section and of any regulations made for the purposes of this section, duty, in relation to goods that have been, or are proposed to be, imported into Australia under Schedule 3 to the Tariff includes an amount paid to a collector on account of the duty that will become payable on those goods.
- (3) For the purposes of this section and of any regulations made for the purposes of this section, the amount of duty in respect of which a person may seek a refund, rebate or remission of duty on goods that are imported into Australia under item 41E of Schedule 4 to the Tariff is to be taken to be the sum of:
 - (a) the amount of money (if any) paid as customs duty on the importation of those goods; and
 - (b) to the extent that duty credit issued under the *ACIS Administration Act 1999* has been offset against customs duty that would otherwise have been payable in respect of those goods—the amount of customs duty offset by the use of the credit.

2 At the end of section 168

Add:

- (2) For the purposes of this section and of any regulations made for the purposes of this section, the amount of duty paid on goods that are imported into Australia under item 41E of Schedule 4 to the Tariff is to be taken to be the sum of:
 - (a) the amount of money (if any) paid as customs duty on the importation of those goods; and
 - (b) to the extent that duty credit issued under the *ACIS Administration Act 1999* has been offset against customs duty that would otherwise have been payable in respect of those

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goods—the amount of customs duty offset by the use of the credit.

*[Minister's second reading speech made in—
House of Representatives on 13 May 1999
Senate on 30 June 1999]*

(91/99)