



ACIS Administration Amendment Act 2003

No. 96, 2003

**An Act to amend the *ACIS Administration Act 1999*,
and for related purposes**

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An Act to amend the *ACIS Administration Act 1999*, and for related purposes

[Assented to 14 October 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *ACIS Administration Amendment Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	14 October 2003
2. Schedule 1	A single day to be fixed by Proclamation, subject to subsection (3)	14 April 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision covered by item 2 of the table does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the ACIS Administration Act 1999

Part 1—Amendments

1 Subsection 4(1)

Omit “section 75A”, substitute “subsection 74A(1)”.

2 After subsection 4(1)

Insert:

(1A) There are 3 stages in ACIS:

- (a) Stage 1—the period commencing on the scheme commencement date and ending 31 December 2005; and
- (b) Stage 2—the period commencing on 1 January 2006 and ending on 31 December 2010; and
- (c) Stage 3—the period commencing on 1 January 2011 and ending on 31 December 2015.

3 Subsections 4(2) and (3)

Repeal the subsections, substitute:

- (2) Each ACIS Stage has a cap on the value of certain duty credit that may be entered in the ACIS ledger in respect of that stage. The stage caps are as follows:
 - (a) ACIS Stage 1—\$2,000,000,000;
 - (b) ACIS Stage 2—\$2,000,000,000;
 - (c) ACIS Stage 3—\$1,000,000,000.

There are also personal limits on each participant in respect of each ACIS year (see section 54).

- (2A) In ACIS Stages 2 and 3, the stage cap will be divided into separate funding pools—one for MVPs and the other for participants who are not MVPs (see section 55).
- (3) In ACIS Stage 2, the R&D scheme operates to provide to MVPs, within the funding pool for MVPs, duty credits that are unmodulated type J investment credits (see Part 5A).

- (3A) Participants can receive duty credits in respect of an ACIS Stage if the cap for that stage has not already been reached. Duty credits issued in respect of a particular ACIS Stage may be applied:
- (a) to the importation of eligible imports; or
 - (b) against the customs duty a person has already paid if the duty was paid in respect of the importation, on or after 1 January 2001, of eligible imports.
- (3B) Duty credit issued in respect of a particular ACIS Stage expires if the duty credit has not been applied against customs duty:
- (a) during the particular stage; or
 - (b) on or before 31 December of the calendar year next following the stage (see section 74A).

4 Subsection 4(6)

Omit “(Part 4)”, substitute “(Part 4 and the R&D scheme for unmodulated type J investment credit)”.

5 Subsection 4(7)

Repeal the subsection, substitute:

- (7) The scheme provides for a modulation process (Part 5) under which unmodulated credit (except unmodulated uncapped production credit and unmodulated type J investment credit), is converted into modulated credit. The modulation process has regard to the stage caps for ACIS.

6 Subsection 4(8)

After “modulated credit”, insert “, unmodulated uncapped production credit or unmodulated type J investment credit”.

7 Subsection 6(1)

Insert:

ACIS Stage means ACIS Stage 1, ACIS Stage 2 or ACIS Stage 3.

8 Subsection 6(1)

Insert:

ACIS Stage 1 means the period commencing on the scheme commencement date and ending on 31 December 2005.

9 Subsection 6(1)

Insert:

ACIS Stage 2 means the period commencing on 1 January 2006 and ending on 31 December 2010.

10 Subsection 6(1)

Insert:

ACIS Stage 3 means the period commencing on 1 January 2011 and ending on 31 December 2015.

11 Subsection 6(1) (definition of *ACIS year*)

Omit “2006”, substitute “2016”.

12 Subsection 6(1) (definition of *duty credit*)

Repeal the definition, substitute:

duty credit means any of the following that has been entered in the ACIS ledger:

- (a) modulated capped production credit;
- (b) unmodulated uncapped production credit;
- (c) modulated investment credit;
- (d) unmodulated type J investment credit.

However, it does not include such a credit that has expired.

13 Subsection 6(1)

Insert:

expires, in relation to a duty credit, has the meaning given by subsection 74A(3).

14 Subsection 6(1) (definition of *final quarter*)

Repeal the definition, substitute:

final quarter means:

- (a) for ACIS Stage 1—the quarter ending on 31 December 2005;
and
- (b) for ACIS Stage 2—the quarter ending on 31 December 2010;
and

(c) for ACIS Stage 3—the quarter ending on 31 December 2015.

15 Subsection 6(1) (paragraph (b) of the definition of *modulated credit*)

Repeal the paragraph.

16 Subsection 6(1) (definition of *modulated uncapped production credit*)

Repeal the definition.

17 Subsection 6(1)

Insert:

R&D scheme means the scheme the Minister formulates under subsection 60A(1).

18 Subsection 6(1)

Insert:

type J investment, in relation to a quarter falling in ACIS Stage 2 and an MVP, means investment undertaken by the MVP:

- (a) in that quarter; and
- (b) in that part of the MVP's research and development that is allowed under the R&D scheme.

Note 1: See regulations made under subsection (5) for when particular investment undertaken by an MVP is treated as having occurred.

Note 2: See section 6C for when investment undertaken by a person can be treated as investment undertaken by another person who is an MVP.

19 Subsection 6(1)

Insert:

unmodulated type J investment credit, in relation to a quarter falling in ACIS Stage 2, means the credit worked out in relation to that quarter and an MVP under the R&D scheme.

20 Subsection 10(1)

Omit “modulated credit, the modulated”, substitute “modulated credit, unmodulated uncapped production credit or unmodulated type J investment credit, the”.

21 Subsection 10(2)

After “modulated credit”, insert “, unmodulated uncapped production credit or unmodulated type J investment credit”.

Note: The heading to section 10 is altered by omitting “**modulated**”.

22 Subsection 40(1)

After “final quarter”, insert “for an ACIS Stage”.

23 Subsection 40(1)

After “2 or more quarters”, insert “for the same ACIS Stage”.

24 Subsection 40(4)

After “final quarter”, insert “for an ACIS Stage”.

25 Section 41

Repeal the section, substitute:

41 Overview of Part

This Part deals with the working out of unmodulated credits.

Note: Unmodulated type J investment credit is worked out under the R&D scheme.

26 Subsection 42(1)

Omit “for the MVP”, substitute “to be issued to the MVP”.

27 Subsection 52(1)

After “unmodulated credits”, insert “, other than unmodulated uncapped production credits and unmodulated type J investment credits,”.

28 Section 53

Repeal the section, substitute:

53 Stage caps on ACIS

Caps for each stage of ACIS

(1) In respect of an ACIS Stage listed in the table below, the Secretary must not enter in the ACIS ledger modulated capped production

Schedule 1 Amendment of the ACIS Administration Act 1999
Part 1 Amendments

credit, modulated investment credit or unmodulated type J investment credit that in total exceeds the amount listed next to that ACIS Stage (the *stage cap*).

Note: Unmodulated type J investment credit can only be issued in respect of ACIS Stage 2.

Stage caps		
Item	ACIS Stage	The stage cap
1	ACIS Stage 1	\$2,000,000,000
2	ACIS Stage 2	\$2,000,000,000
3	ACIS Stage 3	\$1,000,000,000

Stage 2 and 3 caps divided between MVPs and others

- (2) In ACIS Stages 2 and 3, the stage cap will be divided into funding pools of amounts available to be entered in the ACIS ledger for MVPs and amounts available to be entered in the ledger for participants who are not MVPs.

Note: See the guidelines made under section 55 for how the division is to occur.

Matters affecting ACIS Stage 2 cap

- (3) In ACIS Stage 2, the R&D scheme will operate within the limits of the amount of the stage cap and the amount available to be entered in the ledger for MVPs.

Note: See Part 5A.

53A Ledger treatment of amounts recovered under the ACIS (Unearned Credit Liability) Act 1999

If UCL received in same ACIS Stage that duty credit was issued or the following calendar year

- (1) If:
- (a) a person is liable to pay to the Commonwealth a UCL amount in relation to duty credit issued to a participant in respect of a particular ACIS Stage; and

- (b) the UCL amount is received, or likely to be received, by the Commonwealth during:
- (i) the particular stage; or
 - (ii) the calendar year next following the particular stage;
- then, in determining amounts to be entered in the ACIS ledger under subsection 53(1) in respect of the particular stage, the UCL amount must be taken into account in that stage.

Note: See the guidelines made under section 55 for how UCL amounts are to be dealt with.

If UCL received at a later time

- (2) If:
- (a) a person is liable to pay to the Commonwealth a UCL amount in relation to duty credit issued to a participant in respect of a particular ACIS Stage; and
 - (b) the UCL amount is not received, or not likely to be received, by the Commonwealth during:
 - (i) the particular stage; or
 - (ii) the calendar year next following the particular stage;then, in determining amounts to be entered in the ACIS ledger under subsection 53(1), the UCL amount must not be taken into account:
 - (c) in that particular stage; or
 - (d) in any other ACIS Stage.

- (3) In this section:

UCL amount means the amount of a 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.

29 Subsection 54(1)

Omit “at the end of each ACIS year, the total of the modulated credit”, substitute:

- in respect of each ACIS year, the total of the following credit:
- (a) the modulated credit;
 - (b) the unmodulated uncapped production credit;
 - (c) the unmodulated type J investment credit;

Note 1: The heading to section 54 is altered by omitting “**cap**” and substituting “**limit**”.

Note 2: The heading to subsection 54(1) is altered by omitting “*cap*” and substituting “*limit*”.

30 Subsection 54(2)

Omit “at the end of the ACIS year in which the registration took effect, the total of the modulated credit”, substitute:

in respect of the ACIS year in which the registration took effect, the total of the following credit:

- (a) the modulated credit;
- (b) the unmodulated uncapped production credit;
- (c) the unmodulated type J investment credit;

Note 1: The heading to subsection 54(2) is altered by omitting “*cap*” and substituting “*limit*”.

Note 2: The heading to subsection 54(3) is altered by omitting “*cap*” and substituting “*limit*”.

31 Subsection 54(4)

Omit “sales value of the goods or services”, substitute “sales value of the goods sold and services”.

32 Subsection 55(1)

After “modulated”, insert “in respect of an ACIS Stage”.

33 Paragraph 55(1)(a)

Repeal the paragraph, substitute:

- (a) unmodulated investment credit issued to MVPs; and
- (aa) unmodulated investment credit issued to participants who are not MVPs; and

34 Paragraph 55(1)(c)

Repeal the paragraph.

35 After subsection 55(1)

Insert:

- (1A) The Minister must also make guidelines:
 - (a) setting out how the stage caps referred to in section 53 are to be divided between MVPs and participants who are not MVPs as provided for in subsection 53(2); and
 - (b) setting out how UCL amounts (see section 53A) that under subsection 53A(1) are required to be taken into account in

respect of a particular stage are to be dealt with in that stage;
and

- (c) setting out how the various credit referred to in section 54 with respect to a participant is to be adjusted so that the total of the credit does not exceed the 5% limit for the participant provided for in that section.

36 Subsection 55(2)

After “subsection (1)”, insert “or (1A)”.

37 Paragraph 55(2)(b)

Omit “\$2,000,000,000 cap on ACIS (see section 53)”, substitute “relevant stage cap for the relevant ACIS Stage (see section 53)”.

38 Subsection 55(3)

Omit “subsection (1)”, substitute “subsection (1) or (1A)”.

39 Section 56

Repeal the section, substitute:

56 Secretary to modulate capped production credit for each MVP

When the Secretary has worked out the unmodulated capped production credit (if any) in relation to each MVP and a particular quarter in an ACIS Stage, the Secretary must modulate the credit to work out the modulated capped production credit to be issued to each MVP.

40 Section 57

After “particular quarter”, insert “in an ACIS Stage”.

41 At the end of section 57

Add:

Note: Unmodulated type J investment credit is worked out under the R&D scheme.

42 Section 59

After “particular quarter”, insert “in an ACIS Stage”.

43 After Part 5

Insert:

Part 5A—Research and development scheme

60A Research and development scheme

- (1) The Minister must, by writing, formulate a scheme (the *R&D scheme*) for the issuing, in respect of ACIS Stage 2, of duty credits to MVPs in return for the MVPs undertaking type J investment.

Matters that the scheme may provide for

- (2) Without limiting subsection (1), the scheme may provide for the following:
- (a) the kinds of research and development undertaken by MVPs that are allowed for the purposes of the scheme;
 - (b) the amount of credits available to be issued under the scheme;
 - (c) guidelines for working out the amount of unmodulated type J investment credit available to be issued to an MVP in respect of a quarter;
 - (d) the amount of credits available for issuing under the scheme in respect of each year of the scheme;
 - (e) conferring of powers on the Minister or Secretary to make decisions of an administrative character relating to the scheme.

When must scheme be formulated?

- (3) The Minister must formulate the scheme by the end of the period of one calendar year beginning on the day on which the *ACIS Administration Amendment Act 2003* receives the Royal Assent.

Scheme a disallowable instrument

- (4) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

60B Variation of R&D scheme

- (1) The R&D scheme may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) Subsection (1) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

44 Subsection 61(1)

After “modulated credit”, insert “, unmodulated uncapped production credit or unmodulated type J investment credit”.

45 At the end of section 62

Add:

- (3) The ledger is to be divided into 3 parts—one part for duty credits issued in respect of each ACIS Stage.

46 Section 63

After “modulated credit”, insert “, unmodulated uncapped production credit and unmodulated type J investment credit”.

47 Subsection 64(1)

Repeal the subsection, substitute:

- (1) After working out, under sections 54 and 56, the modulated capped production credit (if any) that is to be issued to an MVP, the Secretary must enter the credit in the ACIS ledger in respect of the MVP and the ACIS Stage concerned.

48 Subsection 64(2)

Omit “section 57”, substitute “sections 54 and 57”.

49 At the end of subsection 64(2)

Add “and the ACIS Stage concerned”.

50 Subsection 64(3)

Omit “section 59”, substitute “sections 54 and 59”.

51 At the end of subsection 64(3)

Add “and the ACIS Stage concerned”.

Note: The heading to section 64 is altered by omitting “**modulated**”.

52 At the end of section 64

Add:

- (4) After working out, under subsection 42(1) and section 54, the amount of unmodulated uncapped production credit that is to be issued to an MVP in respect of a quarter, the Secretary must enter the credit in the ledger in respect of the MVP and the ACIS Stage concerned.
- (5) After working out, under the R&D scheme and section 54, the amount of unmodulated type J investment credit that is to be issued to an MVP in respect of ACIS Stage 2, the Secretary must enter the credit in the ledger in respect of the MVP and ACIS Stage 2.

Note: Unmodulated type J investment credit may be issued to an MVP in respect of ACIS Stage 2 only.

53 Section 65

Repeal the section, substitute:

65 Effect of entering credit in the ACIS ledger

When the Secretary enters modulated credit, unmodulated uncapped production credit or unmodulated type J investment credit in the ACIS ledger in respect of a participant, the credit is issued to the participant as a duty credit.

54 Paragraph 66(aa)

Omit “section 75A”, substitute “subsection 74A(1)”.

55 Paragraph 66(e)

Repeal the paragraph.

56 At the end of section 66

Add:

- (2) If the Secretary determines under section 68 that there has been an error in the ACIS ledger that would require an increase in the duty

credit entered in respect of a participant and an ACIS Stage, the Secretary must amend the ledger to fix the error if and only if:

- (a) the cap for the stage has not been reached (see section 53);
and
 - (b) the personal limit for the participant for the ACIS year in which the error was entered in the ledger has not been reached (see section 54).
- (3) If the Secretary determines that there is an error in the ledger that would require a decrease in the duty credit entered in respect of a participant, the Secretary must amend the ledger to fix the error.
- (4) This section operates subject to section 71.

57 Subsection 68(1)

Omit “themselves”, substitute “themselves and an ACIS Stage (the *relevant stage*)”.

58 At the end of subsection 68(2)

Add:

; and (e) must be made during the relevant stage or during the calendar year next following the relevant stage.

59 At the end of section 68

Add:

- (3) An application is valid if it complies with subsection (2).
- (4) If the Secretary receives a valid application under subsection (1), the Secretary must determine if there is an error in the ledger.
- (5) The Secretary may, on his or her own initiative, determine that there is an error in the ledger in respect of a participant and an ACIS Stage.

60 Subsection 69(1)

After “own”, insert “or owned”.

61 After subsection 69(1)

Insert:

(1A) At any time, the ACIS ledger kept in electronic form need only show the entries relating to the period of the ACIS Stage that is current at that time and the calendar year next following that stage.

62 Subsection 70(2)

Omit “sections 56, 57 and 59”, substitute “section 64”.

63 Sections 71 and 72

Repeal the sections, substitute:

71 Time in which entries to be made

The Secretary can only amend the ACIS ledger in respect of an ACIS Stage during that stage and during the 6 calendar years next following that stage.

64 Section 74

Repeal the section, substitute:

74 Overview of Part

This Part:

- (a) provides for the use and expiry of duty credits (Division 1A); and
- (b) provides that duty credits are transferable (Division 2); and
- (c) provides that duty credits may be subject to limited use restrictions (Division 3).

Note: The main use for duty credits is applying duty credits in respect of the importation of eligible imports.

65 After Division 1 of Part 7

Insert:

Division 1A—Use and expiry of duty credits

74A Use and expiry of duty credits

- (1) Duty credits issued in respect of an ACIS Stage may be applied:
 - (a) to the importation of eligible imports; or

- (b) against customs duty a person has already paid if the duty was paid in respect of the importation, on or after 1 January 2001, of eligible imports.

Note 1: Duty credits may also be transferred. See section 75.

Note 2: The purpose of applying duty credit as provided for in paragraph (1)(b) is to get a refund (equal to the amount of duty credit applied) of duty that has already been paid. For provisions about refunds, see the regulations made for the purposes of section 163 of the *Customs Act 1901*.

- (2) Duty credits issued in respect of a particular ACIS Stage may only be applied as provided for in subsection (1):
 - (a) during that particular stage; or
 - (b) on or before 31 December of the calendar year next following the stage.
- (3) Duty credit issued in respect of a particular ACIS Stage *expires* if the duty credit has not been applied as provided for in subsection (1):
 - (a) during the particular stage; or
 - (b) on or before 31 December of the calendar year next following the stage.

74B How application of previously paid duty credits to be made

An application of duty credit under paragraph 74A(1)(b) can only be made by notifying the Secretary. The notification must:

- (a) be in writing; and
- (b) be in the approved form; and
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form; and
- (e) comply with any other applicable requirements specified in regulations made for the purposes of this paragraph.

66 Division 2A of Part 7

Repeal the Division.

67 Subsection 76(1)

Omit “that notice”, substitute “that notice, and for the period specified in that notice”.

68 Paragraph 76(1)(ca)

Omit “section 75A”, substitute “paragraph 74A(1)(b)”.

69 Subsection 77(1)

Omit “that notice”, substitute “that notice, and for the period specified in that notice”.

70 Paragraph 77(1)(ca)

Omit “section 75A”, substitute “paragraph 74A(1)(b)”.

71 Paragraph 100(d)

Omit “modulated”, substitute “unmodulated”.

72 At the end of section 100

Add:

; (e) next, offset so much of the duty credit that is unmodulated type J investment credit.

73 Subsection 109(4)

Omit “year after the year in which the participant is required to provide a first update and before 2005”, substitute “ACIS year after the year in which the participant is required to provide a first update”.

74 Subsection 109(5)

Before “period”, insert “5 year”.

75 Subsection 109(5)

Omit “and ending on 31 December 2005”.

76 After paragraph 111(f)

Insert:

- (fa) a decision by the Secretary under subsection 42(1):
 - (i) not to issue an MVP with unmodulated uncapped production credit; or
 - (ii) as to the amount of any credit to be so issued;

77 Subparagraph 111(g)(i)

Omit “or modulated uncapped”.

78 At the end of section 111

Add:

- ; (j) a decision under the R&D scheme:
 - (i) not to issue an MVP with unmodulated type J investment credit; or
 - (ii) as to the amount of any credit to be so issued.

79 Paragraph 112(3)(b)

Omit “or modulated investment credit”, substitute “, modulated investment credit or unmodulated type J investment credit”.

80 Subsection 112(3)

Omit “if the \$2,000,000,000 cap on ACIS (section 53) has not been reached”, substitute:

if:

- (c) the stage cap (referred to in section 53) for the stage in respect of when the original decision was made has not been reached; and
- (d) the court’s decision is made before the end of the calendar year next following that stage.

81 Paragraph 112(4)(a)

Omit “court decision”, substitute “original decision”.

82 Paragraphs 112(4)(a) and (b)

Omit “cap” (wherever occurring), substitute “limit”.

83 Paragraph 113(3)(b)

Omit “or modulated investment credit”, substitute “, modulated investment credit or unmodulated type J investment credit”.

84 Subsection 113(3)

Omit “if the \$2,000,000,000 cap on ACIS (section 53) has not been reached”, substitute:

if:

- (c) the stage cap (referred to in section 53) for the stage in respect of which the original decision was made has not been reached; and

- (d) the AAT's decision is made before the end of the calendar year next following that stage.

85 Paragraph 113(4)(a)

Omit "AAT decision", substitute "original decision".

86 Paragraphs 113(4)(a) and (b)

Omit "cap" (wherever occurring), substitute "limit".

87 After section 115

Insert:

115A Minister may publish information relating to participants

The Minister may cause to be published the following information about a participant or a person who was a participant:

- (a) that the person is or was a participant and the period of the person's participation in ACIS;
- (b) the amount of duty credit entered in the ACIS ledger in respect of the person and an ACIS year.

Part 2—Transitional provisions

88 Participants in ACIS

A person who was a participant in ACIS immediately before the commencement of this item continues to be a participant during ACIS Stage 2 and ACIS Stage 3 unless:

- (a) the participant is deregistered under Part 11 of the *ACIS Administration Act 1999*; or
- (b) the participant notifies the Secretary that the person ceases to be a participant.

89 Modulations made under section 56 of the ACIS Administration Act 1999

A modulation of unmodulated capped production credit in relation to an MVP made under section 56 of the *ACIS Administration Act 1999* immediately before its repeal and substitution by item 39 of this Schedule, continues in force as if the modulation was made under the substituted section 56.

90 Application of amendments made by items 79 to 86

Items 79 to 86 apply to an application for review of an original decision under section 112 or 113 of the *ACIS Administration Act 1999* that is made on or after the commencement of this item.

91 Application

The amendment made by item 87 applies as follows:

- (a) in relation to a participant who was a participant immediately before item 87 commences, the Minister may publish the information referred to in that item in respect of an ACIS year in ACIS Stage 2 or ACIS Stage 3;
- (b) in relation to a person who becomes a participant on or after the commencement of item 87, the Minister may publish the information referred to in that item from the day that the person becomes a participant in ACIS.

*[Minister's second reading speech made in—
House of Representatives on 25 June 2003
Senate on 9 September 2003]*

(100/03)
