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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ACIS ADMINISTRATION AMENDMENT (UNEARNED CREDIT  
LIABILITY) BILL 2007**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, Tourism and Resources,  
the Hon Ian Macfarlane MP)

## **ACIS ADMINISTRATION AMENDMENT (UNEARNED CREDIT LIABILITY) BILL 2007**

### **GENERAL OUTLINE**

The purpose of the ACIS Administration Amendment (Unearned Credit Liability) Bill 2007 ('the Bill') is to confirm the circumstances under which the Commonwealth can issue an Unearned Credit liability (UCL) to include circumstances where the registered ACIS participant has received credits to which it is not entitled.

The *ACIS Administration Act 1999* (the ACIS Act) establishes the Automotive Competitiveness and Investment Scheme (ACIS). ACIS delivers assistance to eligible recipients in the automotive industry by way of duty credits on a quarterly basis. Claims are lodged by ACIS participants and these are paid through AusIndustry upon receipt of those claims, with a subsequent rigorous audit process employed to verify their validity. This arrangement was put in place at the request of the automotive industry to ensure the timely delivery of assistance to industry members.

From time to time the audit process identifies credits that have been issued in respect of items which were claimed but which were found to be ineligible. The only Commonwealth power to recover credits issued to participants is the issue of a UCL. The mechanism for recovering credits issued to a participant that the audit process reveals is not entitled to those credits has been called into question by a recent decision of the Administrative Appeals Tribunal (AAT).

The AAT held that the Commonwealth does not have the power to raise a UCL where a participant is not entitled to the credits under the ACIS Act unless the credits were issued due to an error in calculation, information was incomplete or if the credit was earned in a transaction that was deemed not at arms length.

The amendments proposed in this Bill are intended to confirm the circumstances in which a UCL may be issued to include recovery of credits issued to participants that were not entitled to receive them.

### **Financial Impact Statement**

The Bill will have no financial impact.

## **NOTES ON CLAUSES**

### ***Clause 1: Short Title***

1. Clause 1 is a formal provision specifying the title of the Bill. The Act will be called the *ACIS Administration Amendment (Unearned Credit Liability) Act 2007*.

### ***Clause 2: Commencement***

2. Clause 2 provides that the Act will commence on the day that it receives Royal Assent.

### ***Clause 3: Schedule(s)***

3. This clause provides that the Schedule to the Bill will amend the Act set out in the Schedule in accordance with the provisions set out in the Schedule.

## **Schedule 1 – Amendments**

### ***ACIS Administration Act 1999***

#### *Item 1 – After subsection 94(1)*

4. This amendment will confirm the circumstances under which an ACIS participant is not entitled to duty credits. The amendment confirms that no entitlement to a credit arises if that credit was issued in respect of an investment that was not an eligible investment. Previously, subsection 94(1) provided that a person was not entitled to credits if an error was made in its calculation, if information was incomplete or if the credit was earned in a transaction that was deemed not at arm's length. This amendment allows the Commonwealth to issue a UCL to recover credits in circumstances where a participant was not entitled to receive them.

#### *Item 2 – Section 95*

5. New section 95 creates automatic liability on the part of participants in circumstances where a participant has received duty credits to which the participant is not entitled for a reason set out in section 94, or any other reason.

#### *Item 3 – Paragraphs 114(j) and (k)*

6. Section 114 of the ACIS Act sets out the grounds on which the AAT may review decisions. Paragraph 114(j) previously provided that a decision made by the Secretary under Section 95 could be reviewed. The Secretary will no longer make a decision under Section 95 as the UCL will simply arise because the person is not entitled to the credit. Section 102 provides that if the Secretary determines that there is a UCL, then the Secretary must give the person notice in writing. This amendment will allow the person to seek a review of a decision to issue a notice and it will therefore ensure that the right to seek a review of a decision to issue a UCL remains.
7. Paragraph 114(k) allows participants to seek the review of decisions made by the Secretary under Section 101. The amendment which provides for a review of a decision under Section 102 makes this provision (Paragraph 114(k)) redundant.

*Item 4 – Application*

8. Applying the amendments from the beginning of stage 2 of ACIS will ensure equity in the way in which credits are issued and will ensure that ACIS continues to operate in line with its original policy intent that was agreed to by industry when ACIS was established.