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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUTOMOTIVE TRANSFORMATION SCHEME BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator the Hon Kim Carr, Minister for Innovation,
Industry, Science and Research)

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OUTLINE

The Automotive Transformation Scheme Bill 2009 (the Bill) establishes the legislative framework for the Automotive Transformation Scheme (the Scheme), which is the centrepiece of the Government's automotive policy, *A New Car Plan for a Greener Future* (the New Car Plan)

(<http://www.innovation.gov.au/Industry/Automotive/Documents/NEWCARPLANGREENERFUTURE.pdf>).

The object of the Scheme is to encourage competitive investment and innovation in the Australian automotive industry. The Scheme will achieve this in a way that improves environmental outcomes and promotes the development of workforce skills. The Scheme provides assistance to participants for the production of motor vehicles and engines, and for investment in eligible research and development, and plant and equipment.

The Bill, together with the ACIS Administration Amendment Bill 2009, will revitalise the Australian automotive industry by increasing support to reinvigorate the industry and to ensure its long-term economic and environmental sustainability.

These Bills, along with other elements of the New Car Plan, demonstrate the Government's commitment to securing the future of this strategically vital sector of the Australian economy. That is why in 2008, the Government commissioned the Hon Steve Bracks to conduct the Review of the Australian Automotive Industry. The Government, in its response to the Review—the New Car Plan—committed to the establishment of a new, better targeted legislative scheme, the Automotive Transformation Scheme, to replace assistance under the Automotive Competitiveness and Investment Scheme (ACIS) from 2011. The passage of these Bills will implement this commitment.

The Scheme improves on the existing ACIS by placing a renewed emphasis on innovation by increasing the support for eligible investment in research and development. That is why the new Scheme increases the rate of claims for investment in eligible research and development from 45 per cent to 50 per cent. The Scheme will also provide assistance in the form of grants instead of duty credits as in ACIS. This is consistent with the recommendation of the Brack's Review of the Australian Automotive Industry. These changes are supported by the automotive industry, which has been extensively consulted as part of the Review's process and through the development of this legislation.

The Bill provides for assistance under the Scheme to include both capped and uncapped assistance. Capped assistance is limited to \$1.5 billion in stage 1 (2011 to 2015) and \$1 billion in stage 2 (2016 to 2020). Capped assistance is guaranteed through a standing appropriation. Uncapped assistance will be provided through an annual appropriation.

The Bill establishes a framework for the Scheme with the administrative details to be included in the regulations. This reduces the administrative complexity of the

legislation and provides the flexibility required to deal with changing circumstances in the Australian automotive industry.

The Bill sets out what matters the regulations will contain, including the registration of participants, the payment of amounts subject to participants meeting certain conditions, the recovery of amounts by the Commonwealth in prescribed circumstances, the payment of interest by scheme participants on overpaid amounts, the review of decisions, and other matters required or incidental to the Scheme.

The Bill ensures that debts under the Scheme may be recoverable by the Commonwealth, including by offsetting against a participant's future payments. Monies recovered may then be redistributed within a relevant stage.

The Bill also includes a strong monitoring regime, including provision for authorised officers to obtain a monitoring warrant to check compliance with the Scheme. These provisions are necessary, given that the Scheme is a self-assessment scheme, to facilitate effective monitoring and to ensure the integrity of the Scheme. The Bill also includes provisions that protect the rights of occupiers of premises, such as judicial oversight of the process for obtaining monitoring warrants.

FINANCIAL IMPACT STATEMENT

The total administered expenses for the Automotive Transformation Scheme, established by the Automotive Transformation Scheme Bill 2009, are estimated at \$3,347 million over the period 2010–11 to 2020–21. This figure is made up of two kinds of assistance:

- capped assistance worth \$2,500 million administered through a special appropriation; and
- uncapped assistance, estimated at \$847 million administered through annual appropriations.

Note: The total administered expenses are an estimate as the uncapped component is partially based on the value of motor vehicles sold by motor vehicle producers registered under the Scheme.

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NOTES ON CLAUSES

This Explanatory Memorandum uses the following abbreviation:

- 'Scheme' means the Automotive Transformation Scheme

Part 1—Preliminary

Clause 1 – Short title

1. This clause provides for the Bill, once enacted, to be cited as the *Automotive Transformation Scheme Act 2009*.

Clause 2 – Commencement

2. Subclause (1) provides that the commencement date for sections 1 and 2, and anything in this Act not elsewhere covered by the table, is the day on which this Act receives Royal Assent. The date of commencement for sections 3 to 29 is the 1 July 2010, unless the *ACIS Administration Amendment Act 2009* does not receive Royal Assent before 1 July 2010, then these sections do not commence at all.

3. Subclause (2) allows for column 3 of the table to contain additional information that is not part of this Act.

Clause 3 – Object

4. Subclause (1) sets out the object of the Bill, which is to encourage competitive investment and innovation in the Australian automotive industry through the provision of assistance to Scheme participants.

5. Subclause (2) states that the object of the Bill is to be achieved in a way that improves environmental outcomes and promotes the development of workforce skills.

Clause 4 – Definitions

6. This clause defines the terms used throughout the Bill.

Part 2—The Automotive Transformation Scheme

Division 1—Making the Automotive Transformation Scheme

Clause 5 – Making the Automotive Transformation Scheme

7. This clause requires regulations to be made that prescribe the Scheme and further the object of the Bill.

8. Subclause (1) provides that the Scheme must prescribe certain matters, namely: the registration of participants; the payment of an amount subject to certain conditions; the recovery by the Commonwealth of amounts in circumstances set out in the regulations; the payment of interest by participants for overpaid amounts; review of decisions by the Administrative Appeals Tribunal or a court; the appointment of authorised officers; and dealing with matters required or permitted by the Act to be included in the Scheme, as well as dealing with ancillary or incidental matters.

Note:

Ancillary or incidental matters could include the making of guidelines as part of the Scheme. The guidelines may include guidelines that set out how certain types of assistance are to be adjusted to ensure the Scheme cap is not exceeded due to over demand for the Scheme.

9. Subclause (2) makes it clear that the Scheme is a self-assessment scheme.

Clause 6 – Other matters that may be included in the Automotive Transformation Scheme

10. This clause provides for other matters that may be included in the Scheme, namely, any or all of the following: the application process for registration; the assessment criteria for registration; the amount of a payment to a Scheme participant; that assistance under the Scheme is not transferable under any circumstances except with approval of the Secretary; and the deregistration of a Scheme participant.

Division 2—Assistance

Subdivision A—Assistance available

Clause 7 – Kinds of assistance

11. This clause provides that the Scheme has two types of assistance: capped assistance and uncapped assistance.

Note:

Uncapped assistance is available to participants registered as motor vehicle producers for the production of approved motor vehicles, engines and engine components.

Capped assistance is available to registered motor vehicle producers for the production of motor vehicles, and investment in research and development, and plant and equipment.

Capped assistance is also available to registered automotive supply chain participants for investment in research and development, and plant and equipment.

Clause 8 – Amount of capped assistance available

12. Subclause (1) states that capped assistance under the Scheme must not exceed the stage caps. Stage 1, commencing 1 January 2011 and ending on 31 December 2015, must not exceed \$1.5 billion and stage 2, commencing 1 January 2016 and ending on 31 December 2020, must not exceed \$1 billion.

13. Subclause (2) provides that total capped assistance under the Scheme must not exceed \$300 million in respect of a Scheme year, not including the amounts set out in subclause (3).

14. Subclause (3) allows for unspent capped assistance to be rolled over to later calendar years within the relevant stage. This aims to address the situation when the industry under demands the Scheme.

15. Subclause (4) prevents capped assistance in respect of a Scheme year to be paid on or after 1 April of the following year. This does not include amounts of capped assistance recovered by the Commonwealth in subclause (6).

16. Subclause (5) allows for capped assistance that is recovered in a particular year to be redistributed in that year or any later years within the relevant stage.

17. Subclause (6) permits amounts of capped assistance recovered by the Commonwealth to be paid in the year following the last year of the stage. This allows recovered amounts of capped assistance to be redistributed to Scheme participants.

Subdivision B—Payments of assistance

Clause 9 – Payments

18. This clause ensures that payments made to participants of the Scheme may only be paid if certain conditions are satisfied. These include that money may be offset or recovered, including from a party owing money to a Scheme participant, in the circumstances specified in the regulations.

Note: Conditions, which need to be satisfied by Scheme participants, may include an obligation to retain documents relating to the Scheme, for participants to update business plans that are provided with a participant's registration and for participants to answer questions and produce documents relating to their claim for assistance under the Scheme.

Subdivision C—Miscellaneous

Clause 10 – Appropriation

19. This clause provides that amounts of capped assistance under the Scheme will be appropriated from the Consolidated Revenue Fund.

20. A standing appropriation ensures the effective administration of the Scheme operating on calendar years. The standing appropriation gives the industry the certainty it needs to plan long-term investment. Additionally, it allows capped assistance that is recovered or capped assistance that is unspent in a calendar year to be returned to the Scheme in each stage for redistribution.

21. The standing appropriation is limited in amount by the Scheme caps and in duration as the Scheme ends on 31 December 2020.

Division 3—Monitoring powers

Subdivision A—Powers for monitoring compliance

Clause 11 – Authorised officer may enter premises by consent or under a monitoring warrant

22. This clause provides that an authorised officer may enter premises—either by the occupier’s consent or under a monitoring warrant—for the purpose of checking compliance or substantiating information provided by a participant under the Scheme.

Clause 12 – Powers available for monitoring compliance

23. This clause sets out the monitoring powers available to an authorised officer.

24. Subclause (1) provides comprehensive monitoring powers to authorised officers, which are necessary, as the Scheme is a self-assessment scheme for which quarterly payments are provided on trust, subject to later compliance and verification. These powers aim to ensure the integrity of the Scheme by deterring participants from over-claiming assistance.

25. Subclause (2) allows an authorised officer to secure a thing for no longer than 24 hours subject to certain conditions.

26. Subclause (3) and (4) includes the power to operate equipment to see whether the equipment contains information relevant to compliance or to assessing information provided under the Scheme.

Subdivision B—Obtaining consent

Clause 13 – Consent

27. Subclause (1) provides that, before obtaining consent from a person to enter premises (under clause 11), the authorised officer must inform the person that he or she may refuse consent.

28. Subclause (2) to (4) clarifies that any consent given by a person to enable entry to premises by the inspector must be voluntary and can be withdrawn.

29. Subclause (5) provides that an authorised officer, whilst on a premises with the occupier's consent, must show their identity card when required by the occupier and they must leave the premises if asked to do so by the occupier.

Subdivision C—Monitoring warrants

Clause 14 – Application for a monitoring warrant

30. Subclause (1) allows an authorised officer to apply to a magistrate for a monitoring warrant for the purposes of establishing whether the Scheme has been complied with.

31. Subclause (2) provides that an authorised officer must give a magistrate information to support the application for a monitoring warrant.

Clause 15 – When a monitoring warrant may be issued

32. Subclause (1) enables a magistrate to issue a warrant that permits more than one authorised officer to enter the same premises for the purposes of establishing whether a participant has complied with the Scheme. The clause restricts the use of monitoring warrants to circumstances when a magistrate is satisfied that it is reasonably necessary for authorised officers to access the premises under a monitoring warrant.

33. Subclause (2) provides that the magistrate must not issue the warrant unless the authorised officer or some other person has given the magistrate information concerning the grounds on which the issue of the warrant is being sought.

Clause 16 – Content of warrant

34. This clause describes the matters that must be contained in a monitoring warrant issued by a magistrate.

Subdivision D—Obligations and incidental powers of authorised officers

Clause 17 – Authorised officer must produce identity card on request

35. This clause provides that an authorised officer cannot exercise any of the powers under this Part, in relation to premises if they do not show their identity card upon being requested to do so by the occupier of those premises. The form of the identity card will be specified in the regulations.

Clause 18 – Announcement before entry

36. This clause provides that before an authorised officer enters premises under a monitoring warrant they must announce that they are authorised to enter the premises, and give any person at the premises an opportunity to allow entry to the premises.

Clause 19 – Copy of warrant to be shown to occupier etc.

37. Subclause (1) provides that, if a warrant in relation to premises is being executed, a copy of the warrant must be made available to the occupier of the premises or another person who represents the occupier, where the occupier or their representative are present at the premises.

38. Subclause (2) requires an authorised officer to identify himself or herself.

39. Subclause (3) provides that the copy need not include the signature of the magistrate who issued the warrant.

Clause 20 – Use of electronic equipment in exercising monitoring powers

40. Subclause (1) provides that an authorised officer may operate electronic equipment at the premises in order to exercise monitoring powers, as long as the authorised officer believes that the equipment may be operated without damaging it.

41. Subclause (2) provides that the authorised officers may secure the electronic equipment in certain circumstances where they require expert assistance to operate the equipment.

42. Subclauses (3) to (7) set out certain requirements for, and limitations on, securing equipment for the purposes of executing monitoring powers.

Clause 21 – Compensation for damage to electronic equipment

43. Subclause (1) provides that where electronic equipment, recorded data, or programs are damaged in the operations mentioned in clause 20, and the damage occurs because of insufficient care in the operation or choice of person to operate the equipment, compensation is payable to the owner.

44. Subclause (2) requires the Commonwealth to pay the owner of the equipment or the user of data or programs reasonable compensation for the damage, as the owner and Commonwealth agree.

45. Subclause (3) provides that if the owner and Commonwealth are unable to agree, then the owner may commence proceedings in the Federal Court of Australia.

46. Subclause (4) provides that in determining the amount of compensation payable regard is to be had as to whether the occupier (or his or her employees or agents) had provided any warning or guidance as to the operation of the thing. This clause aims to minimise compensation where an occupier fails to mitigate damage by providing a warning or guidance.

47. Subclause (5) provides that compensation is payable from the money appropriated by the Parliament.

Subdivision E—Occupier’s rights and responsibilities

Clause 22 – Occupier entitled to be present during execution of monitoring warrant

48. This clause provides that, when present, the occupier of the premises, or a person who represents the occupier, is entitled to observe the execution of a monitoring warrant, unless the occupier impedes the execution. This clause does not prevent the execution of the warrant in two or more areas of the premises at the same time.

Clause 23 – Occupier to provide authorised officer with facilities and assistance

49. This clause requires an occupier of the premises, or a person who represents the occupier, to assist an authorised officer in the execution of a monitoring warrant. Failure to comply with this requirement is an offence.

Subdivision F—Offences

Clause 24 – Offence for failure to answer questions, produce books etc.

50. An offence is committed if a person refuses or fails to answer questions or to produce a document that is requested by the authorised officer who enters the premises under a monitoring warrant. The offence provision is included to enhance the effectiveness of clause 12(1)(e). The offence is punishable by a maximum six months imprisonment.

51. The person is not required to answer questions or produce documents if it may incriminate the person or expose the person to a penalty. The note in subclause (2) explains that a defendant bears an evidential burden in relation to this defence and refers to subsection 13.3(3) of the *Criminal Code*, which explains the concept of an evidential burden.

Note:

The provision is designed to be consistent with paragraph 4.6 of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. The onus is placed on the defendant as the defence of whether a person has a reasonable excuse in relation to clause 12(1)(e) is wholly within the knowledge of the defendant. Additionally, it is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Clause 25 – Offence for failing to provide authorised officers with facilities and assistance

52. An offence is committed if a person breaches the requirement of providing reasonable assistance to the authorised officer when executing a monitoring warrant. The offence is punishable by 30 penalty units for non-compliance with this section.

Note:

The inclusion of the offence is designed to improve the ability of authorised officers to verify and substantiate information in relation to the Scheme in an efficient and effective manner.

Subdivision G—Miscellaneous

Clause 26 – Magistrates—personal capacity

53. This clause provides that the power conferred on magistrates in respect of monitoring warrants, is conferred on them in their personal capacity, and not as a court or a member of a court, although they retain any protection and immunity afforded to them as a member of the court of which they are a member.

Part 3—Miscellaneous

Clause 27 – Transitional arrangements

54. This clause provides for the Scheme to recognise matters of a transitional nature relating to ACIS. This clause allows for the recognition of eligible investments made under ACIS by persons or entities who become participants in the Scheme. Under ACIS, a claim for assistance for eligible investment is paid to a participant over twelve quarterly instalments. The Scheme will therefore continue to recognise claims of registered participants in eligible investment made under ACIS from 2008.

Clause 28 – Delegation

55. Subclause (1) provides for the Minister, in relation to powers under the Scheme, to delegate those powers to the Secretary.

56. Subclauses (2) to (5) provide for the Secretary in relation to powers and functions under the Act or the regulations, to delegate those powers and functions to an SES employee in the Department. In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

Clause 29 – Regulations

57. This clause sets out a power to make regulations that prescribe matters that are required or permitted by the Bill, or are necessary or convenient for carrying out or giving effect to this Bill.