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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Automotive Transformation Scheme Bill 2009

No. , 2009

(Innovation, Industry, Science and Research)

**A Bill for an Act to provide for the establishment of
the Automotive Transformation Scheme, and for
related purposes**

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1 **A Bill for an Act to provide for the establishment of**
2 **the Automotive Transformation Scheme, and for**
3 **related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Automotive Transformation Scheme*
9 *Act 2009*.

Section 2

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.

6

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections 3 to 29	1 July 2010. However, if the <i>ACIS Administration Amendment Act 2009</i> does not receive the Royal Assent before 1 July 2010, the provision(s) do not commence at all.	

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

10 (2) Column 3 of the table contains additional information that is not
11 part of this Act. Information in this column may be added to or
12 edited in any published version of this Act.

13 **3 Object**

14 (1) The object of this Act is to encourage competitive investment and
15 innovation in the Australian automotive industry by providing
16 assistance to participants in the Automotive Transformation
17 Scheme.

18 (2) The object is to be achieved in a way that:
19 (a) improves environmental outcomes; and
20 (b) promotes the development of workforce skills.

4 Definitions

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In this Act:

ACIS has the same meaning as in the *ACIS Administration Act 1999*.

assisting officer, in relation to a monitoring warrant, means a person who is an authorised officer and is assisting in executing the warrant.

ATS participant means a person, entity or group registered under the Automotive Transformation Scheme.

authorised officer means a person appointed by the Secretary under the Automotive Transformation Scheme.

Automotive Transformation Scheme means the scheme prescribed for the purposes of section 5.

Federal Court means the Federal Court of Australia.

monitoring powers has the meaning given by section 12.

monitoring warrant means a warrant issued under section 15.

Secretary means the Secretary of the Department.

stage 1 means:

- (a) the period beginning on 1 January 2011 and ending on 31 December 2015; and
- (b) January, February and March 2016.

stage 2 means:

- (a) the period beginning on 1 January 2016 and ending on 31 December 2020; and
- (b) January, February and March 2021.

Section 5

1

2 **Part 2—The Automotive Transformation Scheme**

3 **Division 1—Making the Automotive Transformation**
4 **Scheme**

5 **5 Making the Automotive Transformation Scheme**

- 6 (1) To further the object of this Act, the regulations must prescribe a
7 scheme (the *Automotive Transformation Scheme*) about the
8 following matters:
- 9 (a) the registration of participants (*ATS participants*) by the
10 Secretary;
 - 11 (b) the payment of an amount to an ATS participant if certain
12 conditions are satisfied;
 - 13 (c) the recovery by the Commonwealth of amounts from ATS
14 participants in prescribed circumstances;
 - 15 (d) the payment of interest by an ATS participant on an overpaid
16 amount;
 - 17 (e) the review of decisions, and, in respect of decisions of a
18 prescribed kind, the limitations that apply to implementing
19 the Administrative Appeals Tribunal's decision or a court's
20 decision about those prescribed kind of decisions;
 - 21 (f) the appointment of authorised officers by the Secretary;
 - 22 (g) a matter required or permitted by this Act to be included in
23 the Scheme;
 - 24 (h) ancillary or incidental matters.
- 25 (2) The Automotive Transformation Scheme is to be a self-assessment
26 scheme.

27 **6 Other matters that may be included in the Automotive**
28 **Transformation Scheme**

29 The Automotive Transformation Scheme may provide for any or
30 all of the following matters:

- 31 (a) the application process for registration;

- 1 (b) the assessment criteria for registration;
- 2 (c) the amount of a payment to an ATS participant;
- 3 (d) the inalienability of an amount of a payment to an ATS
- 4 participant, except with the approval of the Secretary;
- 5 (e) the deregistration of an ATS participant.

Section 7

1

2 **Division 2—Assistance**

3 **Subdivision A—Assistance available**

4 **7 Kinds of assistance**

5 Assistance under the Automotive Transformation Scheme is of two
6 kinds:

- 7 (a) capped assistance; and
8 (b) uncapped assistance.

9 **8 Amount of capped assistance available**

10 (1) The total amount of capped assistance under the Automotive
11 Transformation Scheme must not exceed:

- 12 (a) for stage 1—\$1.5 billion; and
13 (b) for stage 2—\$1 billion.

14 (2) Subject to subsection (3), the total amount of capped assistance
15 paid in respect of a year must not exceed \$300 million.

16 (3) However, if the total amount of capped assistance paid in respect
17 of a particular year is less than \$300 million, the balance may be
18 paid as capped assistance in respect of any later year within the
19 relevant stage.

20 Example: If the total amount of capped assistance paid in respect of the year
21 beginning on 1 January 2012 is \$270 million, the amount of capped
22 assistance available in respect of the year beginning on 1 January 2013
23 is \$330 million.

24 Note: Except for recovered amounts (dealt with under subsection (6)),
25 capped assistance cannot be carried forward from stage 1 to stage 2.

26 (4) Subject to subsection (6), an amount of capped assistance in
27 respect of a year must not be paid on or after 1 April in the
28 following year.

29 (5) For the purposes of subsections (1) to (3), an amount of capped
30 assistance recovered by the Commonwealth is treated as if it had
31 never been paid.

- 1 (6) To the extent that the balance referred to in subsection (3) consists
2 of amounts of capped assistance recovered by the Commonwealth
3 during the last year of a stage, the balance may be paid in the year
4 following the last year of that stage. For the purposes of
5 subsections (1) and (2), such a payment is taken to have been made
6 in respect of the last year of that stage.

7 **Subdivision B—Payments of assistance**

8 **9 Payments**

9 *Making payments*

- 10 (1) The Automotive Transformation Scheme must provide that a
11 payment of capped or uncapped assistance to an ATS participant
12 may only be made:
13 (a) on the condition that all or part of the payment may be offset
14 or recovered by the Commonwealth in the manner and in the
15 circumstances provided for by the Scheme; and
16 (b) on any other conditions provided for by the Scheme.

17 *Recovering payments*

- 18 (2) Without limiting paragraph (1)(a), the Scheme may provide that all
19 or part of a payment of capped or uncapped assistance to an ATS
20 participant may be recovered by the Commonwealth from a person
21 or entity who owes, or may later owe, money to the ATS
22 participant.

23 **Subdivision C—Miscellaneous**

24 **10 Appropriation**

25 Capped assistance under the Automotive Transformation Scheme
26 is to be paid out of the Consolidated Revenue Fund, which is
27 appropriated accordingly.

Section 11

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2 **Division 3—Monitoring powers**

3 **Subdivision A—Powers for monitoring compliance**

4 **11 Authorised officer may enter premises by consent or under a**
5 **monitoring warrant**

- 6 (1) For the purposes of:
- 7 (a) finding out whether the Automotive Transformation Scheme
 - 8 has been complied with; or
 - 9 (b) assessing the correctness of information provided under the
 - 10 Scheme;
- 11 an authorised officer may enter any premises if:
- 12 (c) the occupier of the premises consents to the entry; or
 - 13 (d) the entry is made under a monitoring warrant.

14 Note: Paragraph (c)—see section 13.

- 15 (2) An authorised officer who enters premises under subsection (1)
- 16 may exercise the monitoring powers set out in section 12.

17 **12 Powers available for monitoring compliance**

- 18 (1) An authorised officer who enters premises under subsection 11(1)
- 19 may exercise the following *monitoring powers*:
- 20 (a) the power to search the premises and any thing on the
 - 21 premises;
 - 22 (b) the power to inspect, examine, take measurements of, or
 - 23 conduct tests (including by the taking of samples)
 - 24 concerning, any thing on the premises;
 - 25 (c) the power to take photographs, make video or audio
 - 26 recordings or make sketches of the premises or any thing on
 - 27 the premises;
 - 28 (d) if the authorised officer entered the premises by consent—to
 - 29 ask any person in or on the premises:
 - 30 (i) to answer any questions put by the authorised officer;
 - 31 and

Section 12

- 1 (ii) to produce any book, record or document requested by
2 the authorised officer;
- 3 (e) if the authorised officer was authorised to enter the premises
4 by a monitoring warrant—to require any person in or on the
5 premises:
- 6 (i) to answer any questions put by the authorised officer;
7 and
8 (ii) to produce any book, record or document requested by
9 the authorised officer;
- 10 (f) the power to inspect any book, record or document on the
11 premises;
- 12 (g) the power to take extracts from or make copies of any such
13 book, record or document;
- 14 (h) the power to take onto premises such equipment and
15 materials as the authorised officer requires for the purpose of
16 exercising powers in relation to the premises;
- 17 (i) the power to operate electronic equipment, and do other
18 things, at the premises as mentioned in section 20;
- 19 (j) the powers set out in subsections (2), (3) and (4).
- 20 Note: Failure to comply with paragraph (1)(e) is an offence—see section 24.
- 21 (2) The **monitoring powers** include the power to secure a thing for no
22 more than 24 hours if:
- 23 (a) the thing is found during the exercise of monitoring powers
24 on the premises; and
25 (b) an authorised officer believes on reasonable grounds that:
- 26 (i) the thing affords evidence of the commission of an
27 offence against the Automotive Transformation
28 Scheme, or evidence of the commission of an offence
29 against the *Crimes Act 1914* or the *Criminal Code* that
30 relates to the Scheme; and
31 (ii) it is necessary to secure the thing in order to prevent it
32 from being concealed, lost, destroyed or tampered with
33 before a warrant to seize the thing is obtained.
- 34 (3) The **monitoring powers** include the power to operate equipment at
35 the premises to see whether:
- 36 (a) the equipment; or

Section 13

- 1 (b) a data storage device that:
2 (i) is at the premises; and
3 (ii) can be used with the equipment or is associated with it;
4 contains information that is relevant to:
5 (c) determining whether there has been compliance with the
6 Automotive Transformation Scheme; or
7 (d) assessing the correctness of information provided under the
8 Scheme.
- 9 (4) The *monitoring powers* include the following powers in relation to
10 information described in subsection (3) found in the exercise of the
11 power under that subsection:
12 (a) the power to operate facilities at the premises to put the
13 information in documentary form and copy the documents so
14 produced;
15 (b) the power to operate facilities at the premises to transfer the
16 information to a disk, tape or other storage device that:
17 (i) is brought to the premises for the exercise of the power;
18 or
19 (ii) is at the premises and the use of which for the purpose
20 has been agreed in writing by the occupier of the
21 premises;
22 (c) the power to remove from the premises a disk, tape or other
23 storage device to which the information has been transferred
24 in exercise of the power under paragraph (b).

Subdivision B—Obtaining consent

13 Consent

- 27 (1) Before obtaining the consent of an occupier of premises, the
28 authorised officer must inform the occupier that he or she may
29 refuse consent.
- 30 (2) An entry of an authorised officer because of an occupier's consent
31 is not lawful unless the occupier voluntarily consented to the entry.

- 1 (3) An occupier's consent may be expressed to be limited to entry
2 during a particular period unless the consent is withdrawn before
3 the end of that period.
- 4 (4) A consent that is not limited as mentioned in subsection (3) has
5 effect until the consent is withdrawn.
- 6 (5) If an authorised officer is on the premises with the consent of the
7 occupier, the authorised officer must:
- 8 (a) show his or her identity card to the occupier, if required by
9 the occupier; and
- 10 (b) leave the premises if the occupier asks the authorised officer
11 to do so.

12 **Subdivision C—Monitoring warrants**

13 **14 Application for a monitoring warrant**

- 14 (1) An authorised officer may apply to a magistrate for a monitoring
15 warrant if the authorised officer wishes to find out whether the
16 Automotive Transformation Scheme has been complied with.
- 17 (2) An authorised officer must give the magistrate information on oath
18 or by affirmation to support the grounds for an application under
19 subsection (1).

20 **15 When a monitoring warrant may be issued**

- 21 (1) If:
- 22 (a) an authorised officer applies to a magistrate under subsection
23 14(1); and
- 24 (b) the magistrate is satisfied, on the information given under
25 subsection 14(2), that it is reasonably necessary that one or
26 more authorised officers should have access to premises for
27 the purposes of finding out whether the Automotive
28 Transformation Scheme has been complied with;
- 29 the magistrate may issue a *monitoring warrant* authorising one or
30 more authorised officers to search the premises.

Section 16

- 1 (2) However, a magistrate must not issue a warrant under this section
2 unless the authorised officer or some other person has given to the
3 magistrate, either orally or by affidavit, such further information (if
4 any) as the magistrate requires concerning the grounds on which
5 the issue of the warrant is being sought.

6 **16 Content of warrant**

- 7 If a magistrate issues a warrant, the magistrate is to state in the
8 warrant:
9 (a) a description of the premises to which the warrant relates;
10 and
11 (b) that the warrant authorises one or more authorised officers
12 (whether or not named in the warrant):
13 (i) to enter the premises; and
14 (ii) to exercise the powers set out in section 12; and
15 (c) whether the warrant may be executed at any time or only
16 during particular hours; and
17 (d) the day (not more than 6 months after the issue of the
18 warrant) on which the warrant ceases to have effect.

19 **Subdivision D—Obligations and incidental powers of**
20 **authorised officers**

21 **17 Authorised officer must produce identity card on request**

- 22 An authorised officer is not entitled to exercise any powers under
23 this Division in relation to premises if:
24 (a) the occupier of the premises requires the authorised officer to
25 produce his or her identity card for inspection by the
26 occupier; and
27 (b) the authorised officer fails to comply with the requirement.

28 **18 Announcement before entry**

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

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

5 **19 Copy of warrant to be shown to occupier etc.**

- 6 (1) If the occupier of the premises, or another person who apparently
7 represents the occupier, is present at the premises, the authorised
8 officer executing the monitoring warrant or an assisting officer
9 must make a copy of the warrant available to the person.
- 10 (2) The authorised officer must identify himself or herself to the
11 person at the premises.
- 12 (3) The copy of the monitoring warrant need not include the signature
13 of the magistrate who issued it.

14 **20 Use of electronic equipment in exercising monitoring powers**

- 15 (1) An authorised officer or an assisting officer may operate electronic
16 equipment already at the premises in order to exercise monitoring
17 powers if he or she believes, on reasonable grounds, that the
18 operation of the equipment can be carried out without damage to
19 the equipment.
- 20 (2) If the authorised officer or an assisting officer believes, on
21 reasonable grounds, that:
- 22 (a) there is on the premises material relating to information
23 provided under the Automotive Transformation Scheme that
24 may be accessible by operating electronic equipment on the
25 premises; and
26 (b) expert assistance is required to operate the equipment; and
27 (c) if he or she does not take action under this subsection, the
28 material may be destroyed, altered or otherwise interfered
29 with;
- 30 he or she may do whatever is necessary to secure the equipment,
31 whether by locking it up, placing a guard, or otherwise.

Section 21

- 1 (3) The authorised officer or an assisting officer must give notice to
2 the occupier of the premises of his or her intention to secure
3 equipment and of the fact that the equipment may be secured for up
4 to 24 hours.
- 5 (4) The equipment may be secured:
6 (a) for a period not exceeding 24 hours; or
7 (b) until the equipment has been operated by the expert;
8 whichever happens first.
- 9 (5) If an authorised officer or an assisting officer believes, on
10 reasonable grounds, that the expert assistance will not be available
11 within 24 hours, he or she may apply to a magistrate for an
12 extension of the period.
- 13 (6) The authorised officer or an assisting officer must give notice to
14 the occupier of the premises of his or her intention to apply for an
15 extension. The occupier is entitled to be heard in relation to that
16 application.
- 17 (7) The provisions of this Division relating to the issue of monitoring
18 warrants apply, with such modifications as are necessary, to the
19 issue of an extension.

21 Compensation for damage to electronic equipment

- 20
21 (1) This section applies if:
22 (a) as a result of electronic equipment being operated as
23 mentioned in section 20:
24 (i) damage is caused to the equipment; or
25 (ii) the data recorded on the equipment is damaged; or
26 (iii) programs associated with the use of the equipment, or
27 with the use of the data, are damaged or corrupted; and
28 (b) the damage or corruption occurs because:
29 (i) insufficient care was exercised in selecting the person
30 who was to operate the equipment; or
31 (ii) insufficient care was exercised by the person operating
32 the equipment.

- 1 (2) The Commonwealth must pay the owner of the equipment, or the
2 user of the data or programs, such reasonable compensation for the
3 damage or corruption as the Commonwealth and the owner or user
4 agree on.
- 5 (3) However, if the owner or user and the Commonwealth fail to
6 agree, the owner or user may institute proceedings in the Federal
7 Court for such reasonable amount of compensation as the Court
8 determines.
- 9 (4) In determining the amount of compensation payable under
10 subsection (3), regard is to be had to whether the occupier of the
11 premises, or the occupier's employees and agents, if they were
12 available at the time, provided any appropriate warning or
13 guidance on the operation of the equipment.
- 14 (5) Compensation is payable out of money appropriated by the
15 Parliament.

16 **Subdivision E—Occupier's rights and responsibilities**

17 **22 Occupier entitled to be present during execution of monitoring**
18 **warrant**

- 19 (1) If:
20 (a) a monitoring warrant is being executed; and
21 (b) the occupier of the premises to which the warrant relates, or
22 another person who apparently represents the occupier, is
23 present at the premises;
24 the person is entitled to observe the execution of the warrant.
- 25 (2) The right to observe the execution of the warrant ceases if the
26 person impedes that execution.
- 27 (3) This section does not prevent the execution of the warrant in 2 or
28 more areas of the premises at the same time.

Section 23

1 **23 Occupier to provide authorised officer with facilities and**
2 **assistance**

3 The occupier of premises to which a monitoring warrant relates, or
4 another person who apparently represents the occupier, must
5 provide the authorised officer executing the warrant and any
6 assisting officer with all reasonable facilities and assistance for the
7 effective exercise of their powers.

8 Note: Failure to comply with this requirement is an offence—see section 25.

9 **Subdivision F—Offences**

10 **24 Offence for failure to answer questions, produce books etc.**

11 (1) A person commits an offence if the person refuses or fails to
12 comply with a requirement under paragraph 12(1)(e).

13 Penalty: 6 months imprisonment.

14 (2) Subsection (1) does not apply if the person has a reasonable
15 excuse.

16 Note: The defendant bears an evidential burden in relation to the matter in
17 subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

18 (3) It is a reasonable excuse for a person to refuse or fail to answer a
19 question or produce a book, record or document if answering the
20 question, or producing the book, record or document, would tend
21 to incriminate the person.

22 **25 Offence for failing to provide authorised officer with facilities**
23 **and assistance**

24 A person commits an offence if:

- 25 (a) the person is subject to a requirement under section 23; and
26 (b) the person does an act or omits to do an act; and
27 (c) the act or omission breaches the requirement.

28 Penalty: 30 penalty units.

1 **Subdivision G—Miscellaneous**

2 **26 Magistrates—personal capacity**

3 *Functions conferred personally*

4 (1) The functions conferred on a magistrate by sections 15 and 16 are
5 conferred on the magistrate:

- 6 (a) in a personal capacity; and
7 (b) not as a court or a member of a court.

8 *Functions need not be accepted*

9 (2) The magistrate need not accept the functions conferred.

10 *Protection and immunity*

11 (3) A magistrate performing a function conferred by sections 15 and
12 16 has the same protection and immunity as if he or she were
13 performing the function:

- 14 (a) as the court of which the magistrate is a member; or
15 (b) as a member of the court of which the magistrate is a
16 member.

Section 27

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2 **Part 3—Miscellaneous**

3

4 **27 Transitional arrangements**

5 The Automotive Transformation Scheme must provide for matters
6 of a transitional nature relating to ACIS.

7 Example: A matter of a transitional nature would include the recognition of
8 eligible investments made under ACIS by persons or entities who
9 become ATS participants.

10 **28 Delegation**

11 (1) The Minister may, by written instrument, delegate to the Secretary
12 all or any of the Minister's powers under the Automotive
13 Transformation Scheme.

14 (2) The Secretary may, by written instrument, delegate to an SES
15 employee in the Department all or any of the Secretary's powers
16 under the Scheme.

17 (3) If a power of a prescribed kind is delegated to the Secretary under
18 subsection (1), the Secretary may, by written instrument, delegate
19 that power to an SES employee in the Department.

20 (4) In exercising powers under a delegation under subsection (1) or
21 (3), the delegate must comply with any directions of the Minister.

22 (5) In exercising powers under a delegation under subsection (2), the
23 delegate must comply with any directions of the Secretary.

24 **29 Regulations**

25 The Governor General may make regulations prescribing matters:

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