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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ACIS ADMINISTRATION BILL 1999**

**ACIS (UNEARNED CREDIT LIABILITY) BILL 1999**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, Science and Resources,  
Senator the Honourable Nick Minchin)

**ACIS ADMINISTRATION BILL 1999**  
**ACIS (UNEARNED CREDIT LIABILITY) BILL 1999**

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# **ACIS ADMINISTRATION BILL 1999**

## **ACIS (UNEARNED CREDIT LIABILITY) BILL 1999**

### **OUTLINE**

The *ACIS Administration Bill 1999* and the *ACIS (Unearned Credit Liability) Bill 1999* together with the *Customs Tariff Amendment (ACIS Implementation) Bill 1999* will implement two key elements of the Government's arrangements for the automotive industry post-2000.

The first and second Bills will establish the Automotive Competitiveness and Investment Scheme (ACIS) to commence from 1 January 2001.

The third Bill will reduce the rates of Customs duty on passenger motor vehicles and certain related componentry from 15% to 10% on 1 January 2005 and will facilitate the use of ACIS credit to offset Customs duty on eligible imports.

The purpose of ACIS 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.

#### **1. Customs Tariff Reduction**

The rate of customs duty imposed on passenger motor vehicles (PMVs), and certain parts for PMVs, by the *Customs Tariff Act 1995*, is presently 17.5%. Under the current provisions of the Act, the rate reduces to 15% on 1 January 2000, after which there are no further reductions. The *Customs Tariff Amendment (ACIS Implementation) Bill 1999* will provide for a further reduction to 10% from 1 January 2005.

#### **2. Automotive Competitiveness and Investment Scheme**

ACIS participants will earn benefits in the form of duty credit from the production of motor vehicles and engines and from investment in approved plant and equipment and research and development in Australia. Duty credit may be used to offset Customs duty on eligible imports, or may be transferred.

Motor Vehicle Producers (MVPs) will be able to claim:

- Duty credit equal to 15% (uncapped) plus 10% (capped) of the value of production of PMVs sold in Australia and New Zealand, multiplied by the relevant tariff rate;
- Duty credit equal to 25% of the value of production of motor vehicles (other than PMVs sold in Australia and New Zealand), engines and engine components, multiplied by the relevant tariff rate; and
- Duty credit equal to 10% of the value of their new investment in plant and equipment averaged over the preceding three years.

Automotive Component Producers (ACPs), Automotive Machine Tool and Tooling Producers (AMTP) and Automotive Service Providers (ASPs) will be able to claim:

- Duty credit equal to 25% of the value of their new investment in plant and equipment averaged over the preceding three years; and

- Duty credit equal to 45% of the value of their investment in R&D averaged over the preceding three years.

In instances where MVPs produce automotive components, tooling or services for a third party, they too can access the 25% investment allowance and the 45% R&D allowance.

A fiscal cap of \$2 billion will apply to all benefits paid over the 5 years of ACIS, except the 15% uncapped production credit for PMVs sold in Australia and New Zealand. The 15% uncapped production credit represents the continuation of benefits equivalent to the existing Duty Free Allowance (DFA), and was announced by the Government on 5 June 1997, prior to the establishment of the ACIS framework.

A 5% subsidy to sales cap for each company registered under ACIS will also apply, to ensure that assistance provided under the scheme does not exceed WTO limitations.

The *ACIS Administration Bill 1999* provides for the administrative detail for ACIS to be set out in subordinate legislation.

## **FINANCIAL IMPACT STATEMENTS**

The measures set up in the Bills are expected to have the following financial impact.

### **ACIS**

The provision of benefits under ACIS (except production credit that will directly replace the existing 15% DFA - see next paragraph) is to be capped at \$2 billion in revenue forgone over the five years from 1 January 2001 to 31 December 2005.

Entitlements arising from the continuation of the existing 15% DFA paid on production of PMVs for sale in Australia or New Zealand, announced separately by the Government on 5 June 1997, will be uncapped. Revenue forgone under these entitlements is expected to be approximately \$825 million over the five years from 1 January 2001 to 31 December 2005.

### **TARIFF CUT**

It is difficult to predict the actual impact on revenue of the proposed tariff cuts on motor vehicles and related components in 2005. Assuming the Australian motor vehicle market will continue growing at its recent rate, and that import penetration will grow to account for all new growth in the domestic market, it is estimated that the revenue forgone in fiscal year 2005 will be \$500 million.

It should be noted that there are a number of variables such as the rate of growth in the motor vehicle market, consumer preferences, and exchange rate fluctuations, which influence the price and amount of duty payable on imported vehicles, that can affect the estimate of tariff revenue.

# REGULATION IMPACT STATEMENTS

## BACKGROUND

The core of the Australian automotive industry is represented by four motor vehicle manufacturers and over 200 component, tooling and service providers. The industry is largely concentrated in South Australia and Victoria, and employed approximately 55 000 people in 1996-97, mostly in these two states. It is a significant manufacturing industry, with a turnover of approximately \$15 billion in 1996-97, and exports of about \$2.5 billion in 1998.

The Australian automotive industry has strong links to other resources and manufacturing industries in the Australian economy through supply chains from raw materials to elaborately transformed manufactures. It is among the leaders in the manufacturing sector in the adoption of quality systems. It is a significant investor in R&D and a training ground for trades and professions.

In recent years, the Australian automotive industry has established itself as a low cost, high quality source of design and engineering, and has expertise in flexible, small volume manufacturing. Government assistance has helped the industry to position itself as a high tech, globally focussed, sustainable manufacturing industry. Continued government assistance will help the industry to secure its place in the global market in the context of increasing trade liberalisation.

At the centre of the current assistance arrangements is a steadily declining tariff on passenger motor vehicles (PMVs) and original equipment (OE) components, at 2.5% per year, which will result in a tariff of 15 per cent in the year 2000, and the Export Facilitation Scheme (EFS) and Duty Free Allowance (DFA). EFS had been instrumental in encouraging the Australian automotive industry to become more globally integrated. In line with Australia's commitments under the WTO, the EFS is due to expire on 31 December 2000.

A Government review of post-2000 arrangements for the automotive industry was initiated in 1996, reflecting the long lead times for investment in this industry. The review, informed by an Industry Commission inquiry and the advice of a specially constituted Automotive Manufacturing Council, was intended to determine a strategy to encourage the future development of a sustainable, prosperous and internationally competitive industry having regard to Australia's international obligations and commitments.

Having considered the various policy perspectives on assistance for the automotive industry, the Government announced on 5 June 1997 that tariffs on PMVs and OE components would remain at 15% from 1 January 2000 to 31 December 2004, and would then fall to 10% on 1 January 2005. It also announced that transitional assistance arrangements would be devised to encourage investment and the modernisation of the industry to assist the industry to become globally integrated.

On 22 April 1998, the Government announced its decision to introduce a transitional assistance scheme to be known as the Automotive Competitiveness and Investment Scheme (ACIS) on 1 January 2001. This is a total package of reforms, which will be implemented through three cognate pieces of legislation.

## ISSUE

The current tariff phasing arrangement was due to finish on 31 December 1999. The current EFS was due to finish on 31 December 2000.

The issue was to develop automotive industry support arrangements (including appropriate tariff arrangements and transitional assistance measures) which would achieve four key Government objectives:

- Encourage the development of a sustainable, prosperous and internationally competitive automotive manufacturing industry in Australia;
- Improve the overall economic performance of the Australian automotive industry;
- Provide good quality, competitively priced vehicles to the Australian consumer; and
- Meet Australia's international obligations and commitments.

This set of objectives raised a number of constraints which meant that the range of effective options was limited. It was important to provide an environment in which industry could achieve global integration as well as to adjust to an increasingly liberalised domestic market. The Government was cognisant of the problems caused by the high protection policies of the past and the need for adjustment to take account of the long lead times for the key investments in this industry.

## OBJECTIVE

The objective of the ACIS legislative package is to set in place a post-2000 industry assistance package for the automotive industry.

## OPTIONS

A range of alternative tariff phasing options were canvassed during the review process. The majority view of the Industry Commission report was that tariffs on PMVs and components should continue to be reduced at the rate of 2.5 percentage points per annum until 2004, when the tariff would rest at 5%, the rate currently applying to most Australian manufacturing industries. The minority view expressed in the same report was that the tariff should rest at 15% between 2001 and 2005 and there be a further review in 2004.

In terms of other forms of assistance, the majority view of the Industry Commission report was that EFS should be abolished, but that the DFA should be retained until the tariff reached 5%, at which time it should be reviewed.

The minority report, however, argued that further assistance aimed at assisting the industry to become more globally integrated should be established.

On 5 June 1997, the Government announced that tariffs on PMVs and OE components would remain at 15% from 1 January 2000 to 31 December 2004, and would then fall to 10% on 1 January 2005. The Government also indicated that it would be developing new arrangements for the industry to commence from 2001. On 22 April 1998, the

Government announced its decision to introduce a transitional assistance package to be known as ACIS on 1 January 2001.

## **IMPACT ANALYSIS (COSTS AND BENEFITS) OF THE DECISION**

### **TARIFF PAUSE AND TARIFF REDUCTION ON PASSENGER MOTOR VEHICLES**

The major parties affected by the decision to reduce the tariff are PMV manufacturers and component producers, consumers, other industries and the Government. The Industry Commission report contains estimates of the size of costs and benefits of a tariff pause and tariff reduction.

#### **Benefits**

##### **1. *Cheaper PMVs***

Consumers will be the greatest beneficiaries from the scheduled reduction in the tariff to 10% in 2005. Consumers will pay lower prices for motor vehicles; both imported and locally produced. This will reduce transfers from consumers to government and the Australian motor vehicle industry. Consumers may also benefit from a widened choice of products, although the Australian market is already open to imports and has a wide diversity of product available.

The scheduled reduction in the tariff on PMVs will also lessen costs on other areas of the economy. To the extent that PMVs are capital inputs to other industries, tariffs impose higher business costs and lead to lower demand for these products. Reductions in the price of PMVs, through lower tariffs, will be beneficial to other industries.

The automotive industry will benefit from the reduced tariff on input components used in manufacturing and assembling. The lower cost of inputs will help increase the competitiveness of the automotive industry.

As tariffs are being maintained at 15% from 2000 to 2004, the benefits to consumers, to the automotive industry and to other industries will be lower than if the tariffs had continued to fall over this period.

##### **2. *Increased stability and certainty in the automotive industry***

The automotive industry will benefit from the increased certainty and stability due to the tariff pause and subsequent tariff reduction. The automotive industry has long lead times for investment planning, and therefore will benefit from more time to adjust its production and investment activities to take into consideration the future tariff reduction.

The tariff pause will also create a more stable employment environment in the automotive industry. The industry is a significant manufacturing employer in Victoria and South Australia, and a stable employment environment is of considerable importance to these two regions.

##### **3. *Improved production efficiency***

The automotive industry is expected to improve its productive performance in light of the increased competitive pressure from reduced tariff assistance. Evidence highlighted in

the Industry Commission report about the effects of lowering tariffs since the mid 1980s shows that the increased competitive pressure from reduced assistance has significantly improved productivity, quality and export orientation in the industry, and has facilitated the industry's readiness to take advantage of other reforms, such as labour market reforms.

## **Costs**

### **1. Reduced activity and less profitable performance in the PMV and component sectors and related industries**

The automotive industry will receive less assistance through tariffs on imported automotive products after 1 January 2005. It is possible that under a reduced assistance scenario there could be output and employment re-adjustments in the PMV and component manufacturing industries. Profits and wages could be put under greater pressure as imports become more competitive.

This outcome depends on how the manufacturers respond to the increased price pressure. Present indications are that the industry is embarking on a new round of investment and anticipating continued strong growth in exports. The tariff pause will benefit the automotive industry by enabling it to be better prepared for the tariff reduction in 2005.

### **2. Expected lower Government revenue**

Falls in the tariff could be expected to provide lower revenue levels to the Government, unless the increase in imported vehicles sold is sufficiently large to compensate for the lower revenue per vehicle.

## **AUTOMOTIVE COMPETITIVENESS AND INVESTMENT SCHEME (ACIS)**

ACIS will operate from 1 January 2001 to 31 December 2005, encouraging new investment to help position the industry as a competitive player in the global market. ACIS will provide incentives in the form of duty credit, which may be used to pay Customs duty on eligible imports, or may be transferred.

Motor Vehicle Producers (MVPs) will be able to claim:

- Duty credit equal to 15% (uncapped) plus 10% (capped) of the value of production of PMVs sold in Australia and New Zealand, multiplied by the relevant tariff rate;
- Duty credit equal to 25% of the value of production of motor vehicles (other than PMVs sold in Australia and New Zealand), engines and engine components, multiplied by the relevant tariff rate; and
- Duty credit equal to 10% of the value of their investment in plant and equipment averaged over the preceding three years.

Automotive Component Producers (ACPs), Automotive Machine Tool and Tooling Producers (AMTP) and Automotive Service Providers (ASPs) will be able to claim:

- Duty credit equal to 25% of the value of their investment in plant and equipment averaged over the preceding three years; and

- Duty credit equal to 45% of the value of their investment in R&D averaged over the preceding three years.

In instances where MVPs produce automotive components, tooling or services for a third party, they too can access the 25% investment allowance and the 45% R&D allowance.

A fiscal cap of \$2 billion will apply to all benefits paid over the 5 years of ACIS, except the 15% uncapped production credit for PMVs sold in Australia and New Zealand. The 15% uncapped production credit represents the continuation of benefits equivalent to the existing Duty Free Allowance, and was announced by the Government on 5 June 1997, prior to the Government's decision to establish ACIS.

A 5% subsidy to sales cap for each company registered under ACIS will also apply, to ensure that assistance provided under the scheme does not exceed WTO limitations.

Eligibility criteria will apply to both participating firms and to the products, services, investments and activities against which benefits can be earned. The threshold eligibility tests for registration under ACIS require minimum levels of production and sales to be achieved. Consultation with the industry has indicated that most of the current participants in the Export Facilitation Scheme will be eligible to apply for registration under ACIS.

These eligibility rules are in place to encourage long term, strategic investments of significant scale. The automotive industry has long and complex supply chains, and these eligibility rules will identify those firms with a long term commitment to the industry in Australia.

The major parties affected by the decision to introduce ACIS are motor vehicle producers, automotive component producers, automotive machine tool and tooling producers, automotive service providers, other industries and the Government.

## **Benefits**

### ***1. Continued investment and employment in the automotive and associated industries***

Assistance provided through ACIS should contribute to the continued high levels of output and employment, and other economic activity, such as new capital investment, in the motor vehicle and component manufacturing industries and associated supply industries.

### ***2. Improved production efficiency in the automotive and associated industries***

Improvements in the performance of the automotive industry are expected from the introduction of incentives under ACIS for firms to invest in new plant and equipment and research and development.

ACIS has a strategic focus on encouraging expenditure on innovation and investment. The automotive and associated industries will benefit from longer term investment commitments and will continue to set the pace for automation of design, engineering and manufacturing systems.

## **Costs**

### **1. Expected lower Government revenue**

Import duty concessions can be expected to provide lower revenue levels to the Government. The Government has capped the revenue to be forgone under the scheme (except for the production credit that will directly replace the existing 15% DFA) to \$2 000 million over five years.

### **2. Administrative requirements**

The administrative requirements under ACIS have, as far as possible, been maintained at analogous levels to the requirements under the current EFS and DFA. It is recognised, however, that the validation of claims for benefits which are based on investment in plant and equipment and research and development is less straightforward than identifying production or export performance under the present arrangements.

Participating MVPs, ACPs, AMTPs and ASPs will be expected to provide quarterly reports which provide details of production, investment in plant and equipment and research and development, so that the administering agency can calculate duty credit earned. Compared with the current EFS reporting requirements based on transactions, quarterly reporting will be less onerous.

The need to modulate benefits with regard to the \$2 billion fiscal cap for all participating firms and the 5% subsidy-to-sales cap for individual firms means that there will be a marginal increase in administrative requirements under ACIS, with the bulk of this burden being met by the Commonwealth Government. One area where compliance costs of industry will rise moderately, will be the requirement for participating entities to provide updated annual business plans to assist with the management of the two caps applying under the scheme.

## **CONSULTATION**

Consultation was very broad through both the Industry Commission inquiry into the automotive industry, and through the Automotive Manufacturing Council, which was established to advise the Industry Minister during the review of the industry. Opportunities were provided for all interested parties to participate in the review process and state their views.

The automotive industry has indicated support for the package of measures.

## **CONCLUSION**

The Government decisions to withhold the tariff reduction until 1 January 2005, and to introduce ACIS, will provide a transitional assistance package which will encourage competitive investment and innovation in the Australian automotive industry in order to achieve sustainable growth, in the context of trade liberalisation.

## **IMPLEMENTATION AND REVIEW**

Regulations and other disallowable instruments which will give effect to ACIS will be tabled before the scheme commences. The industry will be consulted as the disallowable instruments are being developed to ensure the new scheme is well understood and suited to the particular needs of the industry. Part of this consultation will address the need to minimise the administrative and compliance burden of the scheme, while not unduly compromising its administrative rigour.

AusIndustry will be the Government agency charged with responsibility for administering ACIS. It is expected that companies seeking registration will be able to apply to AusIndustry from mid-2000, ready for scheme commencement on 1 January 2001.

ACIS has an expiry date of 31 December 2005. A further review of the automotive industry arrangements is scheduled to be undertaken in 2005, having regard to Australia's APEC commitments and progress on market access.

# ACIS ADMINISTRATION BILL 1999

## NOTES ON CLAUSES

### Part 1 - Preliminary

#### Clause 1 - Short Title

This clause provides for the Bill, when enacted, to be cited as the *ACIS Administration Act 1999*.

#### Clause 2 - Commencement

This clause provides that this Act will commence immediately after the *Customs Tariff Amendment (ACIS Implementation) Act 1999* has commenced.

#### Clause 3 - Purpose of the Act

This clause provides that the purpose of the Act is to provide transitional assistance to the automotive industry through the Automotive Competitiveness and Investment Scheme (ACIS) to encourage investment and innovation in order to achieve sustainable growth.

#### Clause 4 - Overview of the Act

This clause sets out the main elements of ACIS, explaining briefly what is covered in each Part of this Act.

#### Clause 5 - Offences

This clause provides that the general principles of criminal responsibility in Chapter 2 of the *Criminal Code* apply to all offences against this Act and explains how the maximum penalties included in this Act will apply.

#### Clause 6 - Definitions

This clause defines terms used throughout the Bill.

#### Clause 7 - Meaning of Production of goods and provision of services in Australia

This clause sets out the minimum requirements under ACIS for recognising production generally, and production in Australia of: engines; motor vehicles; engine components; automotive components; automotive machine tools; automotive machine tooling; and the provision of automotive services. These definitions are required for determining eligibility for registration under ACIS and for determining the value of production for calculating ACIS production credit.

#### Clause 8 - Approved Forms

This clause provides that the Secretary may approve forms for the purposes of ACIS.

## **Clause 9 - Arm's length transactions**

Subclause (1) provides that the production and sales values used by a person as the basis for claiming eligibility or credit under ACIS are arm's length values. This is to ensure that production and sales values are not artificially distorted through transactions between related companies to increase access to ACIS benefits.

Subclause (2) mirrors subclause (1) in relation to investment in plant and equipment and research and development.

Subclause (3) provides that the Minister may make guidelines relating to arm's length transactions.

Subclause (4) states that guidelines made under subclause (3) are disallowable instruments.

## **Clause 10 - Determination of entitlement to modulated credit between participants**

Subclause (1) sets out the principle that only one ACIS participant can earn ACIS credit in relation to a transaction giving rise to the issue of modulated credit.

Subclause (2) provides that the Minister will make rules for identifying the ACIS participant who is entitled to credit where more than one ACIS participant is involved in a transaction giving rise to the issue of modulated credit.

Subclause (3) states that a Ministerial rule made under subclause (2) is a disallowable instrument.

## **Clause 11 - Other Commonwealth assistance**

Subclause (1) defines the circumstances when an ACIS participant is considered to have received other Commonwealth assistance in respect of production and investment activities that give rise to an entitlement to duty credit under ACIS.

Subclause (2) clarifies paragraph (1)(a) which sets out when an MVP is taken to have received other Commonwealth assistance.

Subclause (3) provides that the Minister may determine that a particular form of Commonwealth assistance is, or is not, financial assistance for the purposes of calculating ACIS benefits.

Subclause (4) provides that a Ministerial determination under subclause (2) may also set out the method of working out the amount of financial assistance already received. This amount will then be subtracted from the calculation of unmodulated credit for the ACIS participant.

Subclause (5) states that a Ministerial determination made under this clause is a disallowable instrument.

## **Part 2 - Establishment of, and participation in, ACIS**

### **Division 1 - Overview**

#### **Clause 12 - Overview of Part**

This clause sets out the main elements of this Part, briefly explaining the function of each Division.

### **Division 2 - Establishment of ACIS**

#### **Clause 13 - Establishment of the Automotive Competitiveness and Investment Scheme**

This clause notes that this Act establishes ACIS.

### **Division 3 - Registration under ACIS**

#### **Subdivision A - Rules about registration**

#### **Clause 14 - Rules about the number of registrations a participant may have under ACIS**

Subclauses (1) to (4) regulate the number of registrations a participant may have. An MVP can only be registered as an MVP. An ACP can only be registered as an ACP. An AMTP can also be registered as an ASP and an ASP can also be registered as an AMTP.

#### **Clause 15 - Rules about the effect of further applications for registration on existing registrations**

Subclauses (1) to (3) and (5) provide that registration as an MVP, ACP, AMTP or ASP automatically comes to an end when an ACIS participant's application under a different category of registration is granted. For example, where an ACP applies for registration as an ASP, the ACP registration comes to an end once the ASP registration has been granted.

Subclauses (4) and (6) set out exceptions to this general rule. Where an AMTP applies for registration as an ASP, the applicant can maintain both AMTP and ASP registration at the same time. The applicant for ASP registration will only have its AMTP registration cancelled if it specifies that it no longer desires to be registered as an AMTP. The same rule applies where an ASP applies for registration as an AMTP.

#### **Subdivision B - Applications for registration**

#### **Clause 16 - Application for MVP registration**

Subclause (1) sets out the minimum requirements to be met by a producer of motor vehicles to be eligible to apply for registration as an MVP under ACIS. Paragraph (1)(b) sets out a test of eligibility based on prospective production; this subclause is

particularly applicable to new entrants to the automotive industry. Paragraph (1)(c) provides for a further option for eligibility to apply for ACIS registration through Ministerial approval, on the basis of national interest.

Subclause (2) provides that the application for registration must be made in accordance with Division 5 and conform to any specifications set out in regulations.

#### **Clause 17 - Application for ACP registration**

Subclause (1) sets out the minimum requirements for a producer of automotive components to be eligible to apply for registration as an ACP under ACIS.

Paragraph (1)(b) sets out a test of eligibility based on prospective production; this subclause is particularly applicable to new entrants to the automotive industry.

Paragraph (1)(c) provides for a further option for eligibility to apply for ACIS registration through Ministerial approval, on the basis of national interest.

Subclause (2) sets out the test for registration as an ACP that is applicable to a group of related companies treated as a single person under clause 21. The test is similar to that set out in subclause (1), however, a group must satisfy both elements of eligibility, rather than one or the other.

Subclause (3) provides that the application for registration must be made in accordance with Division 5 and conform to any specifications set out in regulations.

#### **Clause 18 - Application for AMTP registration**

Subclause (1) sets out the minimum requirements for a producer of automotive machine tools or automotive machine tooling to be eligible to apply for registration as an AMTP under ACIS. Paragraph (1)(b) sets out a test of eligibility based on prospective production; this subclause is particularly applicable to new entrants to the automotive industry. Paragraph (1)(c) provides for a further option for eligibility to apply for ACIS registration through Ministerial approval, on the basis of national interest.

Subclause (2) provides that the application for registration must be made in accordance with Division 5 and conform to any specifications set out in regulations.

#### **Clause 19 - Application for ASP registration**

Subclause (1) sets out the minimum requirements for a provider of automotive services to be eligible to apply for registration as an ASP under ACIS. Paragraph (1)(b) sets out a test of eligibility based on prospective production; this subclause is particularly applicable to new entrants to the automotive industry. Paragraph (1)(c) provides for a further option for eligibility to apply for ACIS registration through Ministerial approval, on the basis of national interest.

Subclause (2) provides that the application must be made in accordance with Division 5 and conform to any specifications set out in regulations.

#### **Clause 20 - Ministerial approval to apply for registration in the national interest**

Subclause (1) provides that a person may seek the Minister's permission to apply for registration under ACIS, on the basis that the registration would be in the national interest.

Subclause (2) provides that the Minister may give permission to a person to apply for registration, provided that person meets the registration requirements which are not based on production and where it would be in the national interest for a person to be so registered. For example, the applicant must be a fit and proper person.

Subclause (3) sets out a list of issues to which the Minister may have regard when determining whether or not to grant a permission under this clause.

Subclause (4) allows the Minister to require an applicant under this clause to produce information and documents relevant to the Minister's consideration of the application.

Subclause (5) provides that the Minister may give approval to a person to apply for registration subject to conditions, such as conditions relating to the ongoing registration under ACIS of the person.

Subclause (6) provides that a decision made by the Minister under this clause is a disallowable instrument.

#### **Division 4 - Participation in ACIS by groups of companies**

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

Subclause (1) sets out the types of groups who are eligible to apply to the Secretary for registration under ACIS as an MVP, ACP, AMTP or ASP.

Subclause (2) sets out the requirements for the group's application for permission to apply for registration under ACIS.

Subclause (3) restricts the group's nominated contact person to a resident of Australia.

Subclause (4) provides that the Secretary must deal with an application for permission from a group in accordance with the regulations.

Subclause (5) provides that the Secretary's decision to grant or refuse the group's application must be made in writing, and include reasons if the application is refused.

Subclause (6) provides that where a decision to grant an application for permission is conditional, those conditions must be set out in the Secretary's written decision.

Subclause (7) sets out when a decision to grant permission takes effect.

##### **Clause 22 - Legal status of a group permitted to make application for registration**

This clause provides for a group that is granted permission to apply for registration under ACIS to be treated as a single legal entity for the purposes of eligibility, review of decisions, and rights and liabilities under ACIS. This clause also sets out the test for whether a group is a fit and proper person for the purposes of registration and deregistration.

## **Division 5 - Formal requirements for, and consideration of, applications for registration**

### **Clause 23 - The content of the application for registration**

Subclause (1) sets out certain requirements for an application for registration under ACIS.

Subclause (2) requires applicants to include in their application information relating to their capability to comply with the document retention obligations under clause 108.

Subclause (3) requires an applicant to provide a business plan in respect of a defined period. This provision is necessary to ensure the administrative integrity of the scheme and to enable the administering agency to accurately modulate and distribute ACIS duty credit.

### **Clause 24 - Lodgement of applications**

This clause sets out the ways in which applications for registration under ACIS can be lodged.

### **Clause 25 - When to apply**

This clause provides that an applicant for registration under ACIS can apply at any time after the Act has commenced.

### **Clause 26 - Consideration of registration applications**

Subclause (1) provides that the Secretary must examine each application for registration, and determine whether or not to grant the application, within a fixed period.

Subclause (2) sets out the matters which the Secretary must consider in determining whether or not to grant registration to an applicant. Where the Secretary is satisfied that all the criteria have been met, the Secretary must grant the application and notify the applicant that registration has been granted.

Subclause (3) provides that where the Secretary decides that the applicant has not met all criteria set out in subclause (2), the Secretary must inform the applicant in writing that the application has been refused, providing reasons for the refusal.

Subclause (4) sets out the period in which the Secretary must inform an applicant that the application has been granted or refused.

### **Clause 27 - Secretary may seek further information**

Subclause (1) provides that the Secretary may require the applicant to provide further information within a specified period in relation to the application to be considered under clause 26.

Subclause (2) provides that the applicant is taken to have withdrawn the application if the further information required under subclause (1) is not provided, or if no reasonable explanation is given as to why the information cannot be provided, within the specified period.

## **Clause 28 - Date from which registration takes effect**

Subclause (1) provides that where registration (other than for an application allowed on the basis of national interest) is granted on or before the scheme commencement date, it has effect on and from the scheme commencement date.

Subclause (2) provides that where registration (other than for an application allowed on the basis of national interest) is granted on or after the scheme commencement date, it has effect on and from the date it was granted.

Subclauses (3) to (5) set out the date from which registration takes effect where an application for registration is made following the Minister's permission, under clause 20, to make that application.

## **Clause 29 - Fit and proper person**

Subclauses (1) and (2) set out matters which the Secretary must consider when deciding whether a natural person or a company is a fit and proper person.

Subclause (3) states that this clause does not affect the operation of Part VIIC of the *Crimes Act 1914*.

## **Division 6 - Ongoing requirements of registration**

### **Clause 30 - Ongoing requirement of MVP registration**

This clause sets out the requirements which an MVP must meet in order to maintain its registration under ACIS.

### **Clause 31 - Ongoing requirement of ACP registration**

This clause sets out the requirements which an ACP must meet in order to maintain its registration under ACIS.

### **Clause 32 - Ongoing requirement of AMTP registration**

This clause sets out the requirements which an AMTP must meet in order to maintain its registration under ACIS.

### **Clause 33 - Ongoing requirement of ASP registration**

This clause sets out the requirements which an ASP must meet in order to maintain its registration under ACIS.

### **Clause 34 - When do ongoing requirements need to be met?**

This clause provides that the ongoing eligibility requirements must be met by a participant in every year the participant is involved in the scheme.

## **Part 3 - The making of returns by participants**

### **Clause 35 - Participants to make quarterly returns**

This clause requires all ACIS participants to provide the Secretary with quarterly returns in the manner prescribed.

### **Clause 36 - Contents of MVPs returns**

This clause sets out what information an MVP must include in each quarterly return, including: the MVP's production; certain investment in approved plant and equipment and R&D; and sales. The returns must also include any other particulars required by the form.

### **Clause 37 - Contents of ACPs returns**

This clause sets out what information an ACP must include in each quarterly return, including: investment in approved plant and equipment and R&D; and sales of automotive components, automotive machine tools, automotive machine tooling and automotive services. The returns must also include any other particulars required by the form.

### **Clause 38 - Contents of AMTPs returns**

This clause sets out what information an AMTP must include in each quarterly return, including: investment in approved plant and equipment and R&D; and sales of automotive machine tools and automotive machine tooling. The returns must also include any other particulars required by the form.

### **Clause 39 - Contents of ASPs returns**

This clause sets out what information an ASP must include in each quarterly return, including: investment in approved plant and equipment and R&D; and sales of automotive services. The returns must also include any other particulars required by the form.

### **Clause 40 - Rules concerning returns**

Subclause (1) provides that where an ACIS participant fails to cover any particular MVP production or any investment in a quarterly return (other than a return for the final quarter of the scheme), the production or investment may be covered in its return for either of the subsequent two quarters.

Subclause (2) provides that if production or investment is covered in a later return as provided for in subclause (1), investment or production is taken to have occurred in the quarter it was reported.

Subclause (3) provides that where an ACIS participant fails to cover particular investment or production in either of the subsequent two quarters, as set out in subclause (1), that investment or production will be treated as if it had never occurred.

Subclause (4) provides that where an ACIS participant fails to cover any particular MVP production or any investment in its return for the final quarter of the scheme, the investment or production will be treated as if it had never occurred. This ensures that no additional claims will be considered following the final modulation process.

Subclause (5) deems an ACIS participant to have been in existence for a certain number of quarters prior to the quarter reported, whether or not it actually was in existence, but the ACIS participant is treated as having not undertaken certain investment in each of those previous quarters unless the ACIS participant in fact undertook such investment. This provision facilitates the quarterly moving average method of calculating investment credit.

## **Part 4 - Working out unmodulated credit**

### **Division 1 - Overview**

#### **Clause 41 - Overview of Part**

This clause notes that Part 4 deals with the working out of unmodulated credit.

### **Division 2 - Working out unmodulated production credit and unmodulated investment credit for MVPs**

#### **Clause 42 - Secretary to work out unmodulated production credit for each MVP**

Subclause (1) requires the Secretary to calculate the unmodulated uncapped production credit for each MVP for each quarter according to a set formula.

Subclause (2) requires the Secretary to calculate the unmodulated capped production credit for each MVP for each quarter according to a set formula.

#### **Clause 43 - Secretary to work out unmodulated type A credit for each MVP**

This clause requires the Secretary to calculate the unmodulated credit earned by each MVP for each quarter for investment in that part of the MVPs approved plant and equipment used to produce motor vehicles, engines or engine components.

#### **Clause 44 - Secretary to work out unmodulated type B credit for each MVP**

This clause requires the Secretary to calculate the unmodulated credit earned by each MVP for each quarter for investment in that part of the MVP's approved plant and equipment used to produce certain automotive components, automotive machine tools and automotive machine tooling and automotive services which are not for the MVP's own use.

#### **Clause 45 - Secretary to work out unmodulated type C credit for each MVP**

This clause requires the Secretary to calculate the unmodulated credit earned by each MVP for each quarter for that part of the MVP's approved expenditure on R&D that is directed at producing certain automotive goods and services which are not for the MVP's own use.

### **Division 3 - Working out unmodulated investment credit for ACPs**

#### **Clause 46 - Secretary to work out unmodulated type D credit for each ACP**

This clause requires the Secretary to calculate the unmodulated credit earned by each ACP for each quarter for investment in that part of the ACP's approved plant and equipment used to produce automotive components, automotive machine tools and automotive machine tooling and automotive services.

#### **Clause 47 - Secretary to work out unmodulated type E credit for each ACP**

This clause requires the Secretary to calculate the unmodulated credit earned by each ACP for each quarter for investment in approved R&D used to produce automotive components, automotive machine tools and automotive machine tooling, and automotive services.

#### **Division 4 - Working out unmodulated investment credit for AMTPs**

##### **Clause 48 - Secretary to work out unmodulated type F credit for each AMTP**

This clause requires the Secretary to calculate the unmodulated credit earned by each AMTP for each quarter for investment in that part of the AMTP's approved plant and equipment used to produce automotive machine tools and automotive machine tooling.

##### **Clause 49 - Secretary to work out unmodulated type G credit for each AMTP**

This clause requires the Secretary to calculate the unmodulated credit payable to each AMTP for each quarter for investment in approved R&D used to produce automotive machine tools and automotive machine tooling.

#### **Division 5 - Working out unmodulated investment credit for ASPs**

##### **Clause 50 - Secretary to work out unmodulated type H credit for each ASP**

This clause requires the Secretary to calculate the unmodulated credit payable to each ASP for each quarter for investment in that part of the ASP's approved plant and equipment that is directed at facilitating the provision of automotive services.

##### **Clause 51 - Secretary to work out unmodulated type I credit for each ASP**

This clause requires the Secretary to calculate the unmodulated credit payable to an ASP for investment in approved R&D that is directed at facilitating the provision of automotive services.

## **Part 5 - Modulation of unmodulated credit**

### **Division 1 - Overview**

#### **Clause 52 - Overview of Part**

This clause gives an overview of the main elements of this Part.

### **Division 2 - Caps on scheme and participants**

#### **Clause 53 - \$2,000,000 cap on ACIS**

Subclause (1) provides that the Secretary must not enter in the ACIS ledger modulated capped production credit and modulated investment credit which exceed a \$2 billion fiscal cap.

Subclause (2) provides that in determining the amounts to be entered under subclause (1), the Secretary must take into account amounts received or likely to be received by the Commonwealth under the *ACIS (Unearned Credit Liability) Act 1999*.

#### **Clause 54 - 5% of sales cap on participants**

Subclauses (1) to (3) provide that the modulated credit issued to a participant must not exceed 5% of certain annual sales values of the participant's ACIS goods and services. The method of calculation depends on whether the participant was eligible for registration under ACIS based on retrospective or prospective production.

Subclause (4) defines ***sales value of ACIS goods and services*** for the purpose of this clause.

### **Division 3 - Guidelines for modulation**

#### **Clause 55 - Minister may make modulation guidelines**

Subclause (1) requires the Minister to make guidelines for modulating all types of ACIS credit.

Subclause (2) sets out factors that the Minister must take into consideration in developing the guidelines, including Australia's international obligations under the WTO Agreement on Subsidies and Countervailing Measures.

This subclause also requires that the Minister ensure that revenue forgone by the Government under the scheme does not exceed the \$2 billion fiscal cap over the five years of ACIS or the 5% of sales cap for individual ACIS participants.

The fiscal cap does not include modulated uncapped production credit payable for the production of passenger motor vehicles for sale in Australia and New Zealand. This benefit is equivalent to the continuation of the Duty Free Allowance program, which has been incorporated within the ACIS legislative framework.

Subclause (3) states that the guidelines relating to modulation are disallowable instruments.

#### **Division 4 - MVP credit**

##### **Clause 56 - Secretary to modulate production credit for each MVP**

This clause requires the Secretary to modulate an MVP's production credit once the unmodulated credit earned by that MVP has been determined.

##### **Clause 57 - Secretary to modulate investment credit for each MVP**

This clause requires the Secretary to modulate an MVP's investment credit once the unmodulated investment credit earned by that MVP has been determined.

##### **Clause 58 - Secretary must modulate in accordance with Ministerial guidelines**

This clause requires the Secretary to modulate credit in accordance with guidelines made under clause 55.

#### **Division 5 - ACP, AMTP and ASP credit**

##### **Clause 59 - Secretary to modulate investment credit for each ACP, AMTP and ASP**

This clause requires the Secretary to modulate investment credit earned by an ACP, AMTP or an ASP once the unmodulated investment credit earned by that ACP, AMTP or ASP has been determined.

##### **Clause 60 - Secretary must modulate in accordance with Ministerial guidelines**

This clause requires the Secretary to modulate credit in accordance with guidelines made under clause 55.

## **Part 6 - The ACIS Ledger and its maintenance**

### **Division 1 - Overview**

#### **Clause 61 - Overview of Part**

This clause provides an overview of the main elements of this Part, briefly explaining the function of each Division.

### **Division 2 - Establishment and maintenance of the ledger**

#### **Clause 62 - Establishment and maintenance of ACIS ledger**

Subclause (1) requires the Secretary to establish and maintain the ACIS ledger of duty credit.

Subclause (2) provides that the ledger may be kept in electronic form.

#### **Clause 63 - Information to be kept in ledger**

This clause provides for the ACIS ledger to be a record of duty credit issued to or transferred to a person.

#### **Clause 64 - Entry of modulated credit in the ledger**

This clause requires the Secretary to enter in the ledger the modulated production credit or investment credit issued to an MVP, and ACP, and AMTP or an ASP.

#### **Clause 65 - Effect of entering modulated credit in the ledger**

This clause provides that credit entered in the ACIS ledger is 'duty credit,' that is, it is modulated credit that can be used to offset Customs duty or an unearned credit liability, or it can be transferred to a third party.

#### **Clause 66 - Circumstances in which the Secretary must amend the ledger**

This clause sets out the circumstances in which details in the ACIS ledger must be amended by the Secretary.

#### **Clause 67 - Ledger to show balance of credit**

This clause requires the Secretary to ensure that the ACIS ledger shows the correct balance of duty credit and the reason why entries in the ledger were made.

#### **Clause 68 - Person may apply to Secretary to fix an error in ledger**

This clause provides that a person may apply to the Secretary in writing to amend the ACIS ledger if the person believes that there is an error in the ledger in respect of themselves.

#### **Clause 69 - Electronic access to ledger**

This clause provides that if the ledger is in electronic form, the Secretary may allow persons to have electronic access to information kept on the ACIS ledger which relates to them.

#### **Clause 70 - Secretary to notify owner of credit quarterly of changes to ledger**

This clause provides that the Secretary must notify each person of any changes to his or her balance of duty credit made in each quarter.

### **Division 3 - Period in which entries to ledger to be made**

#### **Clause 71 - Time in which entries to be made**

This clause provides that the Secretary may amend the ACIS ledger at any time.

#### **Clause 72 - Secretary does not have to amend the ledger after 31 December 2006**

This clause provides that the Secretary does not have to make any changes to the ACIS ledger after one year after ACIS has concluded.

### **Division 4 - No liability for ledger entries**

#### **Clause 73 - Secretary not liable in certain circumstances**

This clause provides that the Secretary is not liable, for, or in respect of, an act or thing in good faith done or omitted to be done under this Part of the Act.

## **Part 7 - Dealing in, and use of, duty credit**

### **Division 1 - Overview**

#### **Clause 74 - Overview of Part**

This clause provides an overview of the main elements of this Part.

### **Division 2 - Transfer of credit**

#### **Clause 75 - Duty credit transferable**

Subclause (1) permits the transfer of duty credit.

Subclause (2) requires parties to a transfer of duty credit to notify the Secretary in a specified manner.

Subclause (3) sets out requirements for valid notification.

Subclause (4) provides that a transferee cannot use a duty credit until the Secretary has adjusted the ACIS ledger to reflect the transfer.

Subclause (5) provides that where the ACIS ledger is adjusted to reflect a duty credit transfer and the Secretary later determines that the transferor was not entitled to that duty credit, the transfer is not affected. This is to ensure that the transferee is not penalised by a subsequent determination by the Secretary.

### **Division 3 - Minister may limit use of credit in certain circumstances**

#### **Clause 76 - Minister may limit the use of modulated ACP, AMTP or ASP investment credit**

Subclause (1) gives the Minister the power to restrict the use of ACP, AMTP and ASP modulated investment credit to importing motor vehicles or off-setting a liability under the *ACIS (Unearned Credit Liability) Act 1999*.

Subclause (2) requires that when the Minister makes a declaration limiting the use of investment credit as provided for in subclause (1), the credit can only be used in the way specified in the Minister's declaration. This restriction applies even after a restricted credit has been transferred.

Subclause (3) requires the Minister's notice to be tabled in Parliament.

#### **Clause 77 - Minister may limit use of certain production credit**

Subclause (1) gives the Minister the power to restrict the use of modulated capped production credit to importing motor vehicles or off-setting a liability under the *ACIS (Unearned Credit Liability) Act 1999*.

Subclause (2) requires that when the Minister makes a declaration limiting the use of capped production credit as provided for in subclause (1), the credit can only be used in the way specified in the Minister's declaration. This restriction applies even after a restricted credit has been transferred.

Subclause (3) requires the Minister's notice to be tabled in Parliament.

## **Part 8 - Audit**

### **Division 1 - Overview**

#### **Clause 78 - Overview of Part**

This clause provides an overview of the main elements of this Part, briefly explaining the function of each Division.

### **Division 2 - Appointment of authorised officers and identity cards**

#### **Clause 79 - Appointment of authorised officers**

This clause provides that the Secretary may appoint a person as an authorised officer to carry out the audit-related functions set out in this Part.

#### **Clause 80 - Identity cards**

This clause requires that authorised officers be issued with and carry an identity card when performing functions under this Part.

### **Division 3 - Powers of authorised officer**

#### **Subdivision A - Monitoring powers**

#### **Clause 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**

Subclause (1) provides that an authorised officer may enter business premises and exercise monitoring powers to substantiate information provided under ACIS, or to determine whether this Act has been complied with.

Subclause (2) provides that an authorised officer may only enter business premises where the occupier has consented to the entry and the authorised officer has, on request, shown his or her identity card to the occupier, or where the authorised officer is entering the premises under a monitoring warrant.

Subclause (3) provides that an authorised officer must leave the premises when asked to do so by the occupier if he or she is on those premises with the consent of the occupier.

#### **Clause 82 - Monitoring powers of authorised officers**

Subclause (1) sets out the monitoring powers of authorised officers.

Subclause (2) provides that an authorised officer may operate equipment at the premises to assess the correctness of information provided by the occupier under ACIS.

Subclause (3) provides that an authorised officer may use facilities at the premises to download and copy certain documents and information and to remove those copies from the premises.

### **Subdivision B - Power of authorised officer to ask questions and seek production in certain circumstances**

#### **Clause 83 - Authorised officer may request persons to answer questions**

Subclause (1) provides that an authorised officer who has been given permission by the occupier to enter premises, may ask the occupier to answer questions and produce documents related to the operation of ACIS.

Subclauses (2) to (4) provide that where an authorised officer has been issued with a monitoring warrant, any person in or on the premises must comply with a request to answer questions and produce documents, unless the answer to the question or production of the document may incriminate the person or expose the person to a penalty.

Subclause (5) provides that it is an offence to knowingly give an authorised officer false or misleading information.

### **Division 4 - Obligations and incidental powers of authorised officers**

#### **Clause 84 - Authorised officer must produce identity card on request**

This clause provides that an authorised officer cannot exercise any powers under this Part if he or she does not show his or her identity card at the request of the occupier.

#### **Clause 85 - Consent**

This clause provides that an authorised officer can only enter premises without a warrant if the authorised officer has asked for the consent of the occupier, having informed the occupier that he or she is entitled to refuse consent, and the occupier has voluntarily given his or her consent.

#### **Clause 86 - Announcement before entry**

This clause provides that before an authorised officer enters premises under a warrant, he or she must announce that he or she is authorised to enter, and give any person at the premises the opportunity to allow the authorised officer to enter the premises.

#### **Clause 87 - Details of monitoring warrant to be given to occupier etc. before entry**

This clause sets out certain requirements of authorised officers when executing a monitoring warrant.

#### **Clause 88 - Use of electronic equipment in exercising monitoring powers**

Subclause (1) provides that an authorised officer may operate electronic equipment on the premises in order to exercise monitoring powers, as long as the authorised officer believes, on reasonable grounds, the equipment will not be damaged.

Subclause (2) provides that the authorised officer may secure the electronic equipment in certain circumstances where he or she requires expert assistance to operate the equipment.

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

Subclause (8) defines ***premises*** for the purposes of this clause.

#### **Clause 89 - Compensation for damage to electronic equipment**

This clause provides that compensation is payable to the owner of equipment operated under clause 88 which is damaged because an authorised officer has exercised insufficient care in operating the equipment, or in selecting a person to operate the equipment.

### **Division 5 - Occupier's rights and responsibilities**

#### **Clause 90 - Occupier entitled to be present during execution of monitoring warrant**

This clause provides that, when present, 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 91 - Occupier to provide authorised officer with all facilities and assistance**

This clause requires an occupier to assist an authorised officer executing a monitoring warrant.

### **Division 6 - Warrants**

#### **Clause 92 - Monitoring warrants**

This clause sets out the procedures to be followed and requirements to be met when obtaining and issuing a monitoring warrant for the purposes of this Act.

## **Part 9 - Unearned duty credit**

### **Division 1 - Overview**

#### **Clause 93 - Overview of Part**

This clause provides an overview of the main elements of this Part, briefly explaining the function of each division.

### **Division 2 - Unearned credit liability**

#### **Clause 94 - Person not entitled to certain duty credit**

This clause sets out circumstances in which a person who has or has had duty credit is not entitled to the credit.

#### **Clause 95 - Unearned credit liability**

This clause provides that where a person is not entitled to certain duty credit because of a reason set out in clause 94, that person is liable to pay back an unearned credit liability; the liability will be imposed under clause 4 of the *ACIS (Unearned Credit Liability) Act 1999*.

#### **Clause 96 - Amount of unearned credit liability**

This clause provides that the amount of unearned credit liability payable by a person is equal to the value of duty credit to which the person is not entitled.

### **Division 3 - Offsetting of duty credit against unearned credit liability**

#### **Clause 97 - Duty credit to be offset against liability**

This clause provides that where a person has an unearned credit liability, and has duty credit in the ledger, the credit will be used to offset the liability. The manner in which the different types of credit will be used to offset the liability is as provided for in clauses 98 and 99.

#### **Clause 98 - Offsetting of duty credit of the same kind**

This clause provides that duty credit of the same type as that to which the unearned credit liability relates will be used first to offset the liability.

#### **Clause 99 - Offsetting of other kinds of credit**

This clause provides that where a person's unearned credit liability relates to a particular type of credit, and that person has no credit or insufficient credit of that type in the ledger, credit of a different type will be used to offset the liability.

### **Clause 100 - Order in which credit to be offset**

This clause sets out the order in which credit will be used to offset a person's unearned credit liability where the liability relates to a particular type of credit, and that person has no credit or insufficient credit of that type in the ledger.

### **Clause 101 - Amount of unearned credit liability outstanding**

This clause states that the unearned credit liability outstanding is that liability remaining once all available credit has been offset against the liability.

### **Clause 102 - Secretary to issue notice**

This clause provides that the Secretary must issue a notice to a person where the Secretary determines that the person has an unearned credit liability. The notice will state the initial liability, as well the amount and kind of credit used to offset that liability, and the outstanding liability, if any, to be paid by the person.

## **Division 4 - Time for payment of unearned credit liability**

### **Clause 103 - Time for payment of unearned credit liability**

This clause prescribes the time period in which a person must pay an outstanding unearned credit liability.

### **Clause 104 - Late payment penalty**

This clause sets out the penalty applicable if a person fails to pay an outstanding liability within the period set out in clause 103.

### **Clause 105 - Extension of time for payment of unearned credit liability**

Subclause (1) provides that the Secretary may extend the time for payment of an outstanding liability in a particular case.

Subclause (2) sets out the procedure to apply in relation to applications for extensions of time.

### **Clause 106 - Recovery of unearned credit liability and late payment penalty**

This clause states that an amount of unearned credit liability outstanding or a late payment penalty is recoverable by the Commonwealth as a debt due to the Commonwealth.

## **Division 5 - Regulations**

### **Clause 107 - Regulations may deal with other matters**

This clause provides that regulations may be made, covering other issues relating to the collection and recovery of unearned credit liability.

## **Part 10 - Obligations relating to documents**

### **Clause 108 - Document retention obligations**

Subclause (1) requires MVPs, ACPs, AMTPs and ASPs to maintain, or create and maintain, documents that evidence the particulars provided in each of their quarterly returns. This evidence is required for audit purposes.

Subclause (2) requires ACIS participants to maintain such documents for five years after the relevant return was lodged.

Subclauses (3) and (4) provide that maintaining true certified copies of documents referred to in subclause (1) is acceptable if an ACIS participant is required by law or ordinary commercial practice to provide the original documents to another person.

Subclause (4) sets out the method by which an ACIS participant may certify a true copy of a document.

### **Clause 109 - Update of business plan**

Subclause (1) requires an ACIS participant to provide updates of the business plan provided with its original application. This is to enable the administering agency to maximise the accuracy of modulation of credit throughout the scheme, and to ensure the ongoing eligibility of participants.

Subclauses (2) and (3) set out when the updates are to be provided.

Subclause (4) prescribes the time period each update must cover.

## **Part 11 - Deregistration**

### **Clause 110 - Deregistration**

This clause sets out the circumstances in which the Secretary may deregister an ACIS participant.

## **Part 12 - Administrative review of certain decisions**

### **Clause 111 - Review of decisions effecting duty credit**

This clause sets out the kinds of decisions which may be reviewed by the Administrative Appeals Tribunal (AAT).

### **Clause 112 - Limitations on implementation of Federal Court decision concerning duty credit decisions**

This clause sets out limitations on the implementation of Federal Court decisions in respect of the kinds of decisions set out in clause 111. These limitations are necessary to ensure that credit issued prior to the decision is not affected, and that modulation with regard to the \$2 billion fiscal cap and 5% of sales cap is not corrupted.

### **Clause 113 - Limitations on implementation of AAT decisions concerning duty credit decisions**

This clause sets out limitations on the implementation of AAT decisions in respect of the kinds of decisions set out in clause 111. These limitations are necessary to ensure that credit issued prior to the decision is not affected, and that modulation with regard to the \$2 billion fiscal cap and 5% of sales cap is not corrupted.

### **Clause 114 - Review of other decisions**

This clause lists further kinds of decisions made by the Secretary which may be reviewed by the AAT.

## **Part 13 - Administration of Act**

### **Clause 115 - Secretary may delegate powers**

This clause enables the Secretary to delegate his or her powers under this Act.

### **Clause 116 - Regulations**

This clause provides the Governor General may make regulations for the purposes of the Act.

## **Schedule 1 - Consequential amendments of other Acts**

### **Section 163, *Customs Act 1901***

This amendment will ensure that where duty credit has been used to offset a Customs duty liability, and that liability is later reassessed, the person can receive a monetary refund for the amount of duty that has been overpaid.

### **Section 168, *Customs Act 1901***

This amendment will ensure that duty credit is considered to be equivalent to Customs duty for the purposes of claiming Duty Drawback on imported goods which are subsequently re-exported.

# ACIS (UNEARNED CREDIT LIABILITY) BILL 1999

## NOTES ON CLAUSES

### Part 1 - Preliminary

#### Clause 1 - Short title

This clause provides that the Act may be cited as the *ACIS (Unearned Credit Liability) Act 1999*.

#### Clause 2 - Commencement

This clause provides that this Act will commence at the same time that the *ACIS Administration Act 1999*.

#### Clause 3 - Definitions

This clause provides a definition of **Administration Act** and that definitions set out in the *ACIS Administration Act 1999* will also apply to this Act.

#### Clause 4 - Unearned credit liability on unearned credit under ACIS imposed

This clause imposes a liability for unearned credit, payable by an ACIS participant. This clause links to clause 94 of the *ACIS Administration Bill 1999* which provides that an ACIS participant is liable to pay to the Commonwealth an unearned credit liability in certain circumstances.