Automotive Transformation
Scheme Regulations 2010

Select Legislative Instrument 2010 No. 82

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the Automotive Transformation Scheme Act 2009.

Dated 6 May 2010

QUENTIN BRYCE
Governor-General

By Her Excellency’s Command

KIM CARR
Minister for Innovation, Industry, Science and Research
## Contents

### Part 1  Preliminary

<table>
<thead>
<tr>
<th>Division 1.1</th>
<th>Introduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Name of Regulations 7</td>
</tr>
<tr>
<td>1.2</td>
<td>Commencement 7</td>
</tr>
<tr>
<td>1.3</td>
<td>Establishment of Automotive Transformation Scheme 7</td>
</tr>
<tr>
<td>1.4</td>
<td>Overview of Scheme 7</td>
</tr>
<tr>
<td>1.5</td>
<td>Definitions 9</td>
</tr>
<tr>
<td>1.6</td>
<td>Meaning of production of goods and provision of services in Australia 17</td>
</tr>
<tr>
<td>1.7</td>
<td>Meaning of automotive component 18</td>
</tr>
<tr>
<td>1.8</td>
<td>Meaning of automotive machine tools 19</td>
</tr>
<tr>
<td>1.9</td>
<td>Meaning of automotive services 20</td>
</tr>
<tr>
<td>1.10</td>
<td>Meaning of automotive tooling 21</td>
</tr>
<tr>
<td>1.11</td>
<td>Where sale of goods or services is taken to occur 21</td>
</tr>
<tr>
<td>1.12</td>
<td>Where sale of goods or services is taken not to occur 22</td>
</tr>
<tr>
<td>1.13</td>
<td>Circumstances in which components, tools or tooling are taken to be for MVP’s own use 23</td>
</tr>
<tr>
<td>1.14</td>
<td>Circumstances in which services are taken to be for MVP’s own use 24</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subdivision 1.2.1</th>
<th>Outline of Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.15</td>
<td>Outline of what eligible investment is 24</td>
</tr>
<tr>
<td>1.16</td>
<td>Outline of what eligible production is 25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subdivision 1.2.2</th>
<th>Eligible investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.17</td>
<td>Allowable plant and equipment 25</td>
</tr>
<tr>
<td>1.18</td>
<td>Maximum claimable value for allowable plant and equipment for MVP 29</td>
</tr>
<tr>
<td>1.19</td>
<td>Maximum claimable value for allowable plant and equipment for ACP, AMTP and ASP 31</td>
</tr>
<tr>
<td>1.20</td>
<td>Allowable research and development 34</td>
</tr>
<tr>
<td>1.21</td>
<td>Maximum claimable value for allowable research and development for MVP 38</td>
</tr>
</tbody>
</table>
## Contents

| 1.22 | Maximum claimable value for allowable research and development for ACP, AMTP or ASP | 41 |
| 1.23 | Meaning of labour costs and costs of training and development | 44 |

### Subdivision 1.2.3 Eligible production

| 1.24 | Allowable production for MVP | 46 |
| 1.25 | Maximum claimable value for allowable production for MVP | 46 |

### Division 1.3 Determining eligible investments and value of arm's length transactions

#### Subdivision 1.3.1 Determining when investment is eligible investment

| 1.26 | When investment is taken to have occurred | 48 |
| 1.27 | Sale of eligible investment by ATS participant | 50 |

#### Subdivision 1.3.2 Arm's length transactions

| 1.28 | Production value, sales value or investment determined as if transaction at arm's length | 50 |
| 1.29 | Determining the circumstances when parties treated as not being at arm's length | 51 |
| 1.30 | Production value or sales value when parties treated as not being at arm's length | 51 |
| 1.31 | Value of investment in research and development when parties treated as not being at arm's length | 52 |
| 1.32 | Value of investment in plant and equipment when parties treated as not being at arm's length | 52 |
| 1.33 | Methods for determining value of transactions when parties treated as not being at arm's length | 53 |

## Part 2 Registration under Scheme

### Division 2.1 Rules about registration

| 2.1 | Rules about number of registrations a person may have under Scheme | 55 |
| 2.2 | Rule about registrations under Scheme needing to further object of Act | 55 |
| 2.3 | Rule about effect of further applications for registration on existing registrations | 56 |

### Division 2.2 Applications for registration

| 2.4 | Application for MVP registration | 57 |
| 2.5 | Application for ACP registration | 57 |
| 2.6 | Application for AMTP registration | 58 |
## Application for ASP registration

2.7 Application for ASP registration

## Ministerial permission to apply for registration in national interest

2.8 Ministerial permission to apply for registration in national interest

### Participation in Scheme by groups of companies

2.9 Certain groups of companies may seek permission to apply for registration as single entity

2.10 Dealing with application for permission by group of related bodies corporate

2.11 Legal status of a group permitted to make application for registration

### Formal requirements for, and consideration of, applications for registration

2.12 Content of application for registration

2.13 Lodgement of applications

2.14 When to apply

2.15 Consideration of registration applications

2.16 Fit and proper person

2.17 Secretary may seek further information

2.18 Period of effect of registration

2.19 Registration does not confer entitlement

### Conditions of registration

2.20 General compliance

2.21 Condition of MVP registration

2.22 Condition of ACP registration

2.23 Condition of AMTP registration

2.24 Condition of ASP registration

2.25 Ministerial permission to continue registration in national interest

2.26 Document retention obligations

2.27 Update of business plan

### Deregistration

2.28 Deregistration

### Transfer of registration and investment

#### Transfer of registration

2.29 Meaning of business

2.30 Transfer of registration on transfer of business
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.31</td>
<td>Secretary may seek further information</td>
<td>81</td>
</tr>
<tr>
<td>2.32</td>
<td>Effect of transfer of registration</td>
<td>81</td>
</tr>
<tr>
<td>2.33</td>
<td>Effect of transfer on sales-based cap</td>
<td>82</td>
</tr>
<tr>
<td><strong>Subdivision 2.7.2</strong> Transfer of investment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.34</td>
<td>When investment undertaken by a person may be treated as investment undertaken by another person who is an ATS participant</td>
<td>83</td>
</tr>
<tr>
<td>2.35</td>
<td>When deemed investment is taken to have occurred</td>
<td>85</td>
</tr>
<tr>
<td>2.36</td>
<td>Effect of determination on sales-based cap</td>
<td>86</td>
</tr>
<tr>
<td><strong>Part 3</strong> Payments under the Scheme</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Division 3.1</strong> Making of quarterly returns</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>ATS participants to make quarterly returns</td>
<td>87</td>
</tr>
<tr>
<td>3.2</td>
<td>Making quarterly return does not confer entitlement</td>
<td>87</td>
</tr>
<tr>
<td>3.3</td>
<td>Contents of MVPs’ returns</td>
<td>88</td>
</tr>
<tr>
<td>3.4</td>
<td>Contents of ACPs’ returns</td>
<td>88</td>
</tr>
<tr>
<td>3.5</td>
<td>Contents of AMTPs’ returns</td>
<td>89</td>
</tr>
<tr>
<td>3.6</td>
<td>Contents of ASPs’ returns</td>
<td>89</td>
</tr>
<tr>
<td>3.7</td>
<td>Rules concerning returns</td>
<td>89</td>
</tr>
<tr>
<td>3.8</td>
<td>Further information about quarterly return</td>
<td>90</td>
</tr>
<tr>
<td><strong>Division 3.2</strong> Caps on Scheme and ATS participants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.9</td>
<td>Capped assistance for ATS years</td>
<td>91</td>
</tr>
<tr>
<td>3.10</td>
<td>Capped assistance divided between MVPs and others</td>
<td>91</td>
</tr>
<tr>
<td>3.11</td>
<td>Sales-based cap for payment of assistance</td>
<td>92</td>
</tr>
<tr>
<td><strong>Division 3.3</strong> Making of payments of assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.12</td>
<td>Ministerial Order for working out payments of assistance for ATS participants</td>
<td>92</td>
</tr>
<tr>
<td>3.13</td>
<td>Quarterly payments</td>
<td>93</td>
</tr>
<tr>
<td>3.14</td>
<td>Inalienability of payments</td>
<td>94</td>
</tr>
<tr>
<td>3.15</td>
<td>Condition of payment of assistance</td>
<td>94</td>
</tr>
<tr>
<td><strong>Division 3.4</strong> Entitlement to assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.16</td>
<td>Persons not entitled to certain assistance</td>
<td>94</td>
</tr>
<tr>
<td><strong>Part 4</strong> Recovery of overpayments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>Scheme debt</td>
<td>96</td>
</tr>
</tbody>
</table>
## Part 5  Administrative review of decisions

4.2 Recovery by offsetting 96
4.3 Secretary to issue notice 96
4.4 Interest payable on Scheme debt 97
4.5 Extension of time for payment of Scheme debt 98
4.6 Recovery from person who owes money to ATS participant 98

## Part 6  Miscellaneous

4.1 Request for reconsideration of decision by Secretary 100
4.2 Reconsideration by Secretary 100
4.3 Review of decisions affecting payment of assistance 101
4.4 Limitations on implementation of court decisions concerning payment of assistance 102
4.5 Limitations on implementation of AAT decisions concerning payment of assistance 103
4.6 Review of other decisions 103

## Part 7  Transitional arrangements

4.1 Application 108
4.2 Registration as ATS participant 108
4.3 Recognition of eligible investments 108
Part 1 Preliminary

Division 1.1 Introduction

1.1 Name of Regulations

These Regulations are the *Automotive Transformation Scheme Regulations 2010*.

1.2 Commencement

These Regulations commence on 1 July 2010.

1.3 Establishment of Automotive Transformation Scheme

For section 5 of the Act, these Regulations prescribe the Automotive Transformation Scheme.

1.4 Overview of Scheme

(1) To further the object set out in subsection 3 (1) of the Act, these Regulations prescribe the Scheme that replaces the ACIS from 1 January 2011.

(2) Under the Scheme, ATS participants are entitled to cash payments of assistance for eligible investment and eligible production.

(3) Part 2 provides that an applicant for registration under the Scheme must be engaged in production in Australia of one of the following:

(a) motor vehicles;
(b) engines or engine components;
(c) automotive components;
(d) automotive machine tools or automotive tooling;
(e) automotive services.

Note The meaning of the following terms can be found in these Regulations: engine, engine components and motor vehicle (subregulation 1.5 (1)), production (regulation 1.6), automotive component (regulation 1.7), automotive machine tools (regulation 1.8), automotive services (regulation 1.9) and automotive tooling (regulation 1.10).

(4) Part 2 also provides that:
(a) participation in the Scheme is conditional on compliance with the Act and these Regulations (Division 2.5); and
(b) ATS participants may be deregistered in specified circumstances (Division 2.6); and
(c) registration and investment may be transferred in specified circumstances (Division 2.7).

(5) In relation to payments of assistance, Part 3 provides that:
(a) once registered, an ATS participant must make a quarterly return to be entitled to assistance (Division 3.1); and
(b) the total amount of capped assistance paid in an ATS year must not exceed specified limits and that 55% of the total must be paid to MVPs (Division 3.2); and
(c) there are personal limits on each ATS participant for each ATS year (Division 3.2); and
(d) a method set out in a Ministerial Order is to be used to determine how much an ATS participant is entitled to be paid (Division 3.3).

(6) Part 4 provides that overpayments under the Scheme may be recovered and an ATS participant may be required to pay interest on overpaid amounts.

(7) Part 5 provides for administrative review of certain decisions.

(8) Part 6 sets out how authorised officers are to be appointed, document retention obligations, requirements for publication of information (including annual reporting requirements) and the Minister’s power to make an Order requiring reporting of progress on meeting the object set out in subsection 3 (1) of the Act.
(9) Part 7 provides for transitional matters relating to registration and recognition of eligible investments for participants in ACIS.

1.5 Definitions

(1) In these Regulations:

ACP means a person registered as an automotive component producer under the Scheme.

Note Not all automotive component producers are eligible for registration as ACPs.

acquire, includes acquire by purchase and acquire under a finance lease or operating lease.

Act means the Automotive Transformation Scheme Act 2009.

allowable plant and equipment is plant and equipment of a kind that may be claimed under regulation 1.17.

allowable production for an MVP is production of a kind that may be claimed under regulation 1.24.

allowable research and development is research and development of a kind that may be claimed under regulation 1.20.

AMTP means a person registered as an automotive machine tools producer or automotive tooling producer under the Scheme.

Note Not all automotive machine tools producers or automotive tooling producers are eligible for registration as AMTPs.

approved form means a form approved under regulation 6.1.

ASP means a person registered as an automotive service provider under the Scheme.

Note Not all automotive service providers are eligible for registration as ASPs.

associate has the meaning given by section 318 of the Income Tax Assessment Act 1936.

ATS year means a year identified in the following table for which eligible investments or eligible production may be claimed by an ATS participant.
ATS year

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ATS year cap has the meaning given by regulation 3.9.

Australian Accounting Standards means the accounting standards made by the Australian Accounting Standards Board under section 334 of the Corporations Act 2001.

Australian-based research and development means research and development undertaken in Australia.

Automotive component is defined in regulation 1.7.

Automotive machine tools is defined in regulation 1.8.

Automotive services is defined in regulation 1.9.

Automotive tooling is defined in regulation 1.10.

Deemed investment means an investment determined under regulation 2.34 to be an investment undertaken by an ATS participant.

direct tax means a tax on:
(a) wages, profits, interest, rents, royalties or any other form of income; or
(b) the ownership of property.

electronic communication has the meaning given by subsection 5 (1) of the Electronic Transactions Act 1999.

Eligible investment has the meaning given by subregulation 1.15 (1).
**eligible production** has the meaning given by subregulation 1.16 (1).

**eligible start-up investment amount**, for an ATS participant, means the total expenditure on investment incurred by the ATS participant on the acquisition of land, buildings, structure, plant, equipment, materials or other assets for carrying on business as an MVP, ACP, AMTP or ASP for the first time.

**eligible start-up period**, for an ATS participant, means the period that:

(a) starts on the day the ATS participant first enters into a financial commitment to carry on business as an MVP, ACP, AMTP or ASP not having previously carried on business as an MVP, ACP, AMTP or ASP; and

(b) ends on the day 12 months after the ATS participant first begins production of goods or delivery of services.

**engine** means an engine that:

(a) is designed to propel a motor vehicle; and

(b) has been fitted by its producer with a crankshaft;

whether that engine is a dressed or undressed engine, whether it is a short or long engine and whether it is a finished or unfinished engine.

**engine components** means goods that, if they were imported, would be classified to Schedule 3 to the Tariff as one of the following:

(a) parts for engines classified to heading 8409;

(b) balance shafts, camshafts, crankshafts, plain shaft bearings, flywheels and pulleys classified to heading 8483;

(c) oil pumps, fuel pumps and water pumps classified to heading 8413;

(d) starter motors, alternators and ignition equipment classified to heading 8511;

(e) engine management systems classified to heading 8537 or 9032;

(f) automatic voltage regulators classified to heading 9032;

(g) ignition wiring sets classified to heading 8544.

**finance lease** has the meaning given by the Australian Accounting Standards.
group of related bodies corporate means a group of related bodies corporate within the meaning of sections 9 and 50 of the Corporations Act 2001.

GST has the meaning given by section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.

indirect tax means any tax except a direct tax or import charge, and includes each of the following:
(a) GST or value-added tax;
(b) luxury car tax;
(c) sales tax;
(d) excise tax;
(e) turnover tax;
(f) franchise tax;
(g) stamp tax or duty;
(h) transfer tax or duty;
(i) inventory or equipment tax;
(j) border tax.

industrial property rights include:
(a) the rights (including equitable rights) possessed by a person under the law of Australia as:
   (i) the patentee of a patent in force for an invention; or
   (ii) the owner of a registered trade mark; or
   (iii) the owner of a registered design; and
(b) rights possessed by a person under a law of a foreign country that are equivalent to the rights mentioned in paragraph (a).

information system has the meaning given by subsection 5 (1) of the Electronic Transactions Act 1999.

insolvent under administration means a person who:
(a) under the Bankruptcy Act 1966 or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
(b) under the law of an external Territory or the law of a foreign country, has the status of an undischarged bankrupt;
and includes:

(c) a person any of whose property is subject to control under:
   (i) section 50 or Division 2 of Part X of the *Bankruptcy Act 1966*; or
   (ii) a corresponding provision of the law of an external Territory or the law of a foreign country; or

(d) a person who has, at any time during the preceding 3 years, executed a personal insolvency agreement under:
   (i) Part X of the *Bankruptcy Act 1966*; or
   (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country.

**interchangeable tooling** includes the following:

(a) patterns and core boxes;
(b) moulds for plastic components;
(c) dies, including dies for forging, die casting, powder metallurgy processes and press work;
(d) bending and swaging tools;
(e) jigs;
(f) fixtures, including check fixtures;
(g) cutting tools;
(h) gauges and checking devices for dimensional confirmation and quality control;
(i) models from which tooling is produced, including hard models and rapid prototypes;
(j) aids that are physical representations of product geometry prior to tool manufacture.

**investment undertaken by an ATS participant** has a meaning affected by regulations 1.26, 2.34 and 2.35.

**luxury car tax** has the meaning given by section 27-1 of the *A New Tax System (Luxury Car Tax) Act 1999*.

**maximum claimable value for allowable plant and equipment** means a value in respect of a kind of allowable plant and equipment using the method set out in regulation 1.18 (for MVPs) or 1.19 (for other ATS participants) in respect of that kind of allowable plant and equipment.
maximum claimable value for allowable production for an MVP means a value in respect of a kind of allowable production using the method set out in regulation 1.25.

maximum claimable value for allowable research and development activities means a value in respect of a kind of allowable research and development using the method set out in regulation 1.21 (for MVPs) or 1.22 (for other ATS participants) in respect of that kind of allowable research and development.

motor vehicle means any vehicle (other than a used vehicle):
(a) that has a gross vehicle weight of not more than 3.5 tonnes; and
(b) that, if imported, would be classified to:
   (i) a subheading of heading 8702 or 8703 (other than 8703.10.00) of Schedule 3 to the Tariff; or
   (ii) subheading 8704.21, 8704.31 or 8704.90 of Schedule 3 to the Tariff.

motor vehicle producer means a person who undertakes the production of motor vehicles or engines.

MVP means a person registered as a motor vehicle producer under the Scheme.

Note Not all motor vehicle producers are eligible for registration as MVPs.

MVP production, in relation to a quarter and to an MVP, means the completion in that quarter by the MVP of the production of:
(a) motor vehicles; or
(b) engines; or
(c) engine components.

MVP's own use has the meaning given by regulations 1.13 and 1.14.

offshore research and development means research and development that is not Australian-based research and development.

operating lease has the meaning given by the Australian Accounting Standards.
original equipment means:
(a) an automotive component for use in the production of a motor vehicle or an engine by a motor vehicle producer; or
(b) an automotive component designed to the specifications of a motor vehicle producer and purchased by that producer for post assembly fitment to a motor vehicle.

original investment, in relation to a deemed investment, means the investment undertaken by the original investor which is determined under regulation 2.34 to be an investment undertaken by an ATS participant.

original investor has the meaning given by regulation 2.34.

previous investment, in relation to an investment undertaken by an ATS participant by way of acquiring plant and equipment under a sale and leaseback arrangement, means whichever of the following that applies:
(a) the investment in the plant and equipment undertaken by the ATS participant by way of acquiring the plant and equipment by purchase before it was sold and leased back;
(b) the investment in the plant and equipment undertaken by the ATS participant by way of building or making the plant and equipment before it was sold and leased back.

production means production to which regulation 1.6 applies.

production value means the value of production, automotive components, tools, tooling, or a service worked out in accordance with the following:
(a) for an MVP — regulation 1.25;
(b) for an ACP — subregulations 2.5 (3) or 2.22 (3);
(c) for an AMTP — subregulations 2.6 (3) or 2.23 (3);
(d) for an ASP — subregulations 2.7 (3) or 2.24 (3).

provided in Australia has the meaning given by subregulation 1.6 (7).

quarter means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October of a year.

relevant quarter has the meaning given by subregulation 7.3 (2).
Rent, in relation to plant and equipment acquired under an operating lease, means an amount, however described, payable under the lease as consideration for leasing the plant and equipment, but does not include any deposit payable under the lease.

Sale has a meaning affected by regulations 1.11 and 1.12.

Sale and leaseback arrangement, in relation to an investment in plant and equipment undertaken by an ATS participant, means an arrangement under which plant and equipment acquired by purchase, or built or made, by the ATS participant is sold to, and immediately leased back under a finance lease from, another person.

Sales value means:

(a) for the sale of goods produced in Australia by an ATS participant — the value of the goods sold reduced by the amount of sales tax payable on those goods; and

(b) for the sale of services provided in Australia by an ATS participant — the value of the services.

Scheme means the Automotive Transformation Scheme.

Scheme debt has the meaning given by regulation 4.1.

Services includes the provision, grant or conferral of any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities under a contract, for which remuneration is payable in the form of a royalty or similar exaction.


(2) For these Regulations, a reference to a person registered as an MVP, ACP, AMTP or ASP includes a reference to a group that is so registered in accordance with Division 2.3.
1.6 Meaning of production of goods and provision of services in Australia

Assembly of components can be production

(1) A person is taken to produce a thing even if the process of production consists entirely of assembling the thing from component parts and the person does not produce any of those component parts.

No production unless sale has occurred

(2) A person is taken to produce a thing only at the time when the person sells the thing produced.

Production of engines

(3) Subject to subregulations (1) and (2), an engine is taken to have been produced in Australia if:
   (a) the fitting of the crankshaft into the engine is carried out in Australia; and
   (b) the engine has passed final quality control at the end of a production line in Australia.

Production of motor vehicles

(4) Subject to subregulations (1) and (2), a motor vehicle is taken to have been produced in Australia if the motor vehicle:
   (a) has undergone a process of colour coated painting in Australia; and
   (b) has passed final quality control at the end of a production line in Australia.

Production of engine components

(5) Subject to subregulations (1) and (2), an engine component is taken to have been produced in Australia if:
   (a) at least one substantial process in the manufacture of the component is carried out in Australia; and
   (b) the component has passed final quality control at the end of a production line in Australia.
Part 1 Preliminary
Division 1.1 Introduction

Regulation 1.7

Production of automotive components, automotive machine tools or automotive tooling

(6) Subject to subregulations (1) and (2), an automotive component, an automotive machine tool or automotive tooling is taken to have been produced in Australia if:

(a) at least one substantial process in the manufacture of the automotive component, automotive machine tool or automotive tooling is carried out in Australia; and

(b) the automotive component, automotive machine tool or automotive tooling, as the case requires, has passed final quality control at the end of a production line in Australia.

Provision of automotive services

(7) An automotive service is taken to have been provided in Australia if:

(a) the design, development, engineering or production work comprising that service is carried out predominantly in Australia; and

(b) payment has been received for carrying out the service.

1.7 Meaning of automotive component

(1) An automotive component means any component (whether its construction or assembly has been completed or not):

(a) that is for use in any type of vehicle that, if it were imported, would be classified to Chapter 87 of Schedule 3 to the Tariff; or

(b) that has the essential character of a component to which paragraph (a) applies.

(2) However, each of the following kinds of component is not an automotive component for these Regulations:

(a) raw materials;

(b) goods (for example, paint, steel, cable or carpet) in bulk;

(c) a component that must be cut to length or shape;

(d) a component that is not purpose-built for automotive use (for example, a fastener or electrical device in general use).
(3) Without limiting subregulation (2), hides or leather used, or intended to be used, in motor vehicles are not automotive components for these Regulations.

(4) However, nothing in subregulation (3) prevents a component from being an automotive component if it is made up in part of leather.

1.8 Meaning of automotive machine tools

(1) Automotive machine tools means machine tools of a kind:
   (a) that are designed and built to be used solely for:
      (i) the production of motor vehicles, engines, engine components or automotive components; or
      (ii) facilitating the provision of automotive services; or
   (b) that, when used with interchangeable tooling, are used solely or mainly for a function mentioned in paragraph (a).

   Note Interchangeable tooling is defined in subregulation 1.5 (1).

(2) Without limiting subregulation (1), automotive machine tools of a kind mentioned in that subregulation include machine tools for the following functions:
   (a) cutting, welding or forming materials;
   (b) casting, forging, moulding and extrusion;
   (c) heat treatment;
   (d) surface finishing;
   (e) assembly;
   (f) measuring or testing.

(3) Also, automotive machine tools of a kind mentioned in subregulation (1) include machine tools for handling physical inputs that are integral to the production process.

Example
A robotic arm that loads blanks into a stamping machine.

(4) However, automotive machine tools of a kind mentioned in subregulation (1) do not include the following:
   (a) machine tools for the production of raw materials;
   (b) machine tools that are ordinarily hand-held;
(c) stillages (other than stillages that are purpose-built for automotive production) or other passive storage equipment.

1.9 Meaning of automotive services

(1) Automotive services means design, development, engineering or production services for motor vehicles, engines, engine components, automotive components, automotive machine tools or automotive tooling that constitute:
   (a) design, development, engineering or production, including normal design functions; or
   (b) development activities, including the manufacture of prototypes and testing; or
   (c) the development and installation of purpose-designed systems for quality assurance and process control; or
   (d) the layout design of production equipment.

(2) Without limiting subregulation (1), automotive services include the development and sale of computer software relating solely to an activity mentioned in subregulation (1).

(3) However, the automotive services mentioned in subregulation (1) do not include:
   (a) the installation of financial controls; or
   (b) staff selection systems; or
   (c) the design of buildings for housing production equipment; or
   (d) the sale by an ATS participant of existing know-how, including off-the-shelf computer software that can be applied without modification to the needs of persons other than the ATS participant; or
   (e) the sale by an ATS participant of training services; or
   (f) any activity that is peripheral or incidental to the production process in Australia; or
   (g) any activity that is not integral to the production process in Australia, including an aftermarket or customising activity; or
(h) the hire to a person of goods for use in the production process in Australia; or
(i) the transportation of components to, within or from Australia.

(4) In subregulation (3):

**know-how** means private knowledge, information or expertise relating to commercial or industrial operations that:

(a) is of commercial value; and
(b) is imparted for the purpose of enabling the recipient to carry out a particular activity.

### 1.10 Meaning of automotive tooling

(1) Automotive tooling means interchangeable tooling used, with automotive machine tools, solely for:

(a) the production of motor vehicles, engines, engine components or automotive components; or
(b) facilitating the provision of automotive services; or
(c) the production of other interchangeable tooling for a purpose mentioned in paragraph (a) or (b).

*Note* *Interchangeable tooling* is defined in subregulation 1.5 (1).

(2) Without limiting subregulation (1), tooling of the kind mentioned in that subregulation includes tooling for handling physical inputs that are integral to a relevant production process.

### 1.11 Where sale of goods or services is taken to occur

(1) A sale of goods or services is taken to have occurred, for these Regulations, in the circumstances mentioned in subregulation (2), (3), (4) or (5).

(2) A sale of goods or services is taken to have occurred if:

(a) in the case of goods — title to the goods passes from the seller to the buyer for the first time, and the seller:
   (i) has received cash or other consideration for the goods; or
(ii) has an enforceable claim against the buyer in respect of the goods; or

(b) in the case of services — the services have been provided by the seller to the buyer and the seller:
   (i) has received cash or other consideration for the services; or
   (ii) has an enforceable claim against the buyer in respect of the services.

Example for subparagraph (2) (a) (ii)
An enforceable claim may arise from an agreement by the buyer to pay at a later date for the goods provided by the seller, or to provide other goods or services (for example, automotive components or advertising) in exchange for those goods.

(3) A sale of goods or services is taken to have occurred if the goods or services are provided:
   (a) as a form of payment to creditors (for example, for sponsorship or advertising); or
   (b) as a gift to a non-profit scientific institution, or a charitable or public educational institution.

(4) A sale of a motor vehicle or engine owned by an MVP is taken to have occurred if the motor vehicle or engine is transferred by the MVP to an associate of the MVP to be sold or leased.

(5) A sale of a motor vehicle owned by an MVP is taken to have occurred if:
   (a) the motor vehicle is retained for use by employees of the MVP or at a site owned or controlled by the MVP; and
   (b) is included in the MVP’s register of assets or inventory account.

1.12 Where sale of goods or services is taken not to occur

(1) Despite regulation 1.11, a sale of goods or services is taken not to have occurred, for these Regulations, in the circumstances mentioned in subregulation (2), (3), (4) or (5).
(2) A sale of goods is taken not to have occurred if:
   (a) the goods are lent by a person to another person with the intention that they be returned to the lender; and
   (b) the lender retains title to the goods.

(3) A sale of goods or services is taken not to have occurred if a corresponding credit for the goods or services is subsequently issued.

(4) A sale of goods or services is taken not to have occurred if the goods or services have previously been treated as sold for these Regulations.

(5) A sale of goods or services is taken not to have occurred if the transaction relating to the goods or services is between 2 or more companies in a group registered under regulation 2.9 as a single entity.

1.13 Circumstances in which components, tools or tooling are taken to be for MVP’s own use

(1) For regulations 1.17 and 1.20, automotive components, automotive machine tools or automotive tooling produced by an MVP are to be taken to be produced for the MVP’s own use in the circumstances mentioned in paragraph (2) (a) or (b).

(2) The circumstances are as follows:
   (a) the automotive components produced by the MVP, whether or not sold to someone else, are used in motor vehicles, engines or engine components produced by the MVP;
   (b) the automotive machine tools or automotive tooling produced by the MVP, whether or not sold to someone else, are used to produce automotive components, whether or not owned by the MVP, that are used in motor vehicles, engines or engine components produced by the MVP.

(3) In this regulation:

   *automotive components* means automotive components other than engines or engine components.
1.14 **Circumstances in which services are taken to be for MVP’s own use**

(1) For regulations 1.17 and 1.20, automotive services provided by an MVP are to be taken to be provided for the MVP’s own use in the circumstances mentioned in paragraph (2) (a), (b) or (c).

(2) The circumstances are as follows:

   (a) the automotive services provided by the MVP, whether or not sold to someone else, are used in the MVP’s production of motor vehicles, engines or engine components;

   (b) the automotive services provided by the MVP, whether or not sold to someone else, are used in the production of the MVP’s components;

   (c) the automotive services provided by the MVP, whether or not sold to someone else, are used in the production of automotive machine tools or automotive tooling, whether or not owned by the MVP, that are used to produce the MVP’s components.

(3) In this regulation:

   *automotive components* means automotive components other than engines or engine components.

   *MVP’s components* means automotive components, whether or not owned by the MVP, that are used in motor vehicles, engines or engine components produced by the MVP.

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24 Automotive Transformation Scheme Regulations 2010 2010, 82

Federal Register of Legislative Instruments F2010L01201
(2) However:
   (a) the allowable plant and equipment is only allowed to a given value which is the maximum claimable value for plant and equipment; and
   (b) the allowable research and development is only allowed to a given value which is the maximum claimable value for research and development.

(3) The maximum claimable value for plant and equipment or research and development is calculated differently for MVPs and for other ATS participants.

1.16 Outline of what eligible production is

(1) Eligible production is production by an MVP in allowable production.

(2) However, the allowable production is only allowed to a given value which is the maximum claimable value for production.

Subdivision 1.2.2 Eligible investment

1.17 Allowable plant and equipment

(1) An ATS participant may claim the following kinds of plant and equipment as allowable plant and equipment:
   (a) plant and equipment for the manufacture, assembly, design, development or engineering of motor vehicles, engines, engine components, automotive components, automotive machine tools or automotive tooling;
   (b) plant and equipment directly supporting the manufacture, assembly, design, development or engineering of motor vehicles, engines, engine components, automotive components, automotive machine tools or automotive tooling;
   (c) plant and equipment required to comply with a law of the Commonwealth, a State or a Territory relating directly to the manufacture, assembly, design, development or engineering of motor vehicles, engines, engine components, automotive components, automotive machine tools or automotive tooling;
(d) plant and equipment for the activation of manufacturing processes for the production of motor vehicles, engines, engine components, automotive components, automotive machine tools or automotive tooling;

(e) plant and equipment facilitating the provision of automotive services or allowable research and development;

(f) plant and equipment indirectly supporting functions that are integral to the production of motor vehicles, engines, engine components, automotive components, automotive machine tools or automotive tooling.

Examples for paragraph (b)
Plant and equipment for build sequencing and process control, supply of materials to an assembly line, movement of components or sub-assemblies from process to process, quality assurance testing and monitoring, or painting or other final preparation of the product as a saleable product.

Examples for paragraph (c)
Plant and equipment required to comply with vehicle emission standards or environmental controls on production.

Examples for paragraph (d)
Plant and equipment for motor vehicle ordering and inventory control systems.

Examples for paragraph (f)
Plant and equipment for purchasing systems for goods or services, or for costing systems.

Note Allowable plant and equipment, for an ATS participant, may include plant and equipment installed on a site that is not owned or controlled by the ATS participant.

(2) Without limiting subregulation (1), plant and equipment of a kind mentioned in a paragraph in that subregulation includes the following:

(a) computer hardware and software to the extent that the hardware or software is used for a function or process mentioned in that paragraph;

(b) a facility:

(i) having a special functional role relating to a function or process mentioned in that paragraph; and
(ii) not used solely for housing or sheltering a production process or the provision of automotive services;
(c) any spare or replacement part for the plant and equipment.

Examples for paragraph (b)
Reinforced flooring for heavy items of plant, or a paint room or other controlled environment.

(3) However, plant and equipment of a kind mentioned in a paragraph in subregulation (1) does not include the following:
(a) plant and equipment not in Australia;
(b) plant and equipment not for use in Australia;
(c) land;
(d) a building that is not a facility referred to in paragraph (2) (b);
(e) plant and equipment that has a value of less than $300 when new;
(f) plant and equipment that has previously been owned and used in Australia;
(g) plant and equipment acquired by an ATS participant under a finance lease for an initial term of less than 12 months;
(h) for an MVP — plant and equipment mentioned in subregulation (5).

(4) For paragraph (3) (f), plant and equipment is not taken, for an ATS participant, to have previously been owned and used in Australia if:
(a) the investment in the plant and equipment is undertaken by the ATS participant by way of acquiring the plant and equipment under a sale and leaseback arrangement, and:
   (i) the plant and equipment has been owned in Australia only by the ATS participant before the sale and leaseback arrangement; or
   (ii) if the previous investment is a deemed investment — the plant and equipment has been owned in Australia only by the original investor and the ATS participant before the sale and leaseback arrangement; or
(b) the investment in the plant and equipment is undertaken by the ATS participant by way of acquiring the plant and equipment under a finance lease, and:
   (i) the lessor has not been, and is not, an ATS participant; and
   (ii) the plant and equipment has been owned in Australia only by the lessor; and
   (iii) the plant and equipment has not been used in Australia before the acquisition; or

(c) the investment in the plant and equipment is undertaken by the ATS participant by way of acquiring the plant and equipment under an operating lease, and:
   (i) the lessor has not been, and is not, an ATS participant; and
   (ii) the plant and equipment has been owned in Australia only by the lessor; and
   (iii) the plant and equipment has not been used in Australia, or has been used in Australia only by the ATS participant under another operating lease immediately before the acquisition.

(5) An MVP may not claim plant and equipment used:
   (a) to produce automotive components (other than engines or engine components) for the MVP’s own use; or
   (b) to produce automotive machine tools or automotive tooling for the MVP’s own use; or
   (c) to facilitate the provision of automotive services for the MVP’s own use.

(6) In this regulation:

   spare or replacement part means a part that:
   (a) is only able to be used in connection with allowable plant and equipment that is the subject of a claim under the Scheme; and
   (b) is not used in the day to day servicing of allowable plant and equipment; and
   (c) will be recognised, in the ATS participant’s accounts, as an asset in accordance with the Australian Accounting Standards.
1.18  **Maximum claimable value for allowable plant and equipment for MVP**

(1) For an MVP, this regulation sets out the method of working out the maximum claimable value for allowable plant and equipment of each kind mentioned in subregulation 1.17 (1).

(2) If the plant and equipment is acquired by an MVP by purchase, the maximum claimable value for allowable plant and equipment is:

\[
\left[ (A - B) + C \right] \times 1.2
\]

where:
- \(A\) is the purchase price for the plant and equipment.
- \(B\) is the sum of the following:
  - (a) any amount included in the purchase price to cover installation costs for the plant and equipment that is separately itemised;
  - (b) any amount included in the purchase price to cover maintenance costs for the plant and equipment.
- \(C\) is the sum of each of the following that relates to the purchase and that has not been included in the purchase price:
  - (a) freight charges;
  - (b) insurance costs;
  - (c) import charges;
  - (d) clearance charges;
  - (e) sales taxes.

(3) If the plant and equipment is acquired by the MVP under a finance lease (other than under a sale and leaseback arrangement), the maximum claimable value for allowable plant and equipment is:

\[
D \times 1.2
\]

where:
- \(D\) is the capital value of the plant and equipment shown on the lease document.
(4) If the plant and equipment is acquired by the MVP under a sale and leaseback arrangement, the maximum claimable value for allowable plant and equipment is:

(a) the amount claimed for the previous investment; or

(b) if the previous investment has not been covered in a previous return — the maximum claimable value, worked out under subregulation (2) or (6), for the plant and equipment in relation to the previous investment.

(5) If the plant and equipment is acquired by the MVP under an operating lease, the maximum claimable value for allowable plant and equipment, for a quarter, is:

(a) the total amount paid as rent under the lease in that quarter for any period within the period:

(i) starting:

(A) at the beginning of the period of 2 years before the ATS year for the MVP; or

(B) if at the time referred to in sub-subparagraph (A) the plant and equipment is not in Australia — on the day when the plant and equipment is imported into Australia; and

(ii) ending at the end of 31 December 2020; or

(b) if the plant and equipment is imported into Australia in that quarter — the total amount paid as rent under the lease before the end of that quarter for any period within the period:

(i) beginning on the day when the plant and equipment is imported into Australia; and

(ii) ending at the end of 31 December 2020.

(6) If the plant and equipment is built or made by the MVP, the maximum claimable value for allowable plant and equipment, for a quarter, is:

\[ E \times 1.2 \]
where:

\( E \) is:

(a) the value of the plant or equipment recorded in the MVP’s accounts or register of assets; or

(b) if the plant and equipment (the new plant and equipment) is part of an existing plant and equipment — the total net increase, recorded in the MVP’s accounts or register of assets for that quarter, in the value of the existing plant or equipment as a result of the building and making of the new plant and equipment.

(7) Despite anything in subregulations (2) to (6), if an expenditure, however described, is to be taken into account in working out the maximum claimable value for allowable plant and equipment and the expenditure includes an amount of GST payable on the supply to which the expenditure relates, the expenditure is to be reduced by the amount of GST for the purpose of working out the maximum claimable value for allowable plant and equipment.

Note 1 If an investment involves the MVP entering into a transaction with another person, regulation 1.28 states that the value of the investment is to be determined on the basis that the MVP and the other person are at arm’s length.

Note 2 See regulations 1.30 to 1.33 for how to determine arm’s length amounts.

1.19 Maximum claimable value for allowable plant and equipment for ACP, AMTP and ASP

(1) For an ACP, AMTP and ASP, this regulation sets out the method of working out the maximum claimable value for allowable plant and equipment of each kind mentioned in subregulation 1.17 (1).

(2) If the plant and equipment is acquired by an ACP, AMTP or ASP by purchase, the maximum claimable value for allowable plant and equipment is:

\[ (A - B) + C \]
where:

A is the purchase price for the plant and equipment.

B is the sum of the following:

(a) any amount included in the purchase price to cover installation costs for the plant and equipment that is separately itemised;

(b) any amount included in the purchase price to cover maintenance costs for the plant and equipment.

C is the sum of each of the following that relates to the purchase and that has not been included in the purchase price:

(a) freight charges;
(b) insurance costs;
(c) import charges;
(d) clearance charges;
(e) sales taxes.

(3) If the plant and equipment is acquired by the ACP, AMTP or ASP under a finance lease (other than under a sale and leaseback arrangement), the maximum claimable value for allowable plant and equipment is the capital value of the plant and equipment shown on the lease document.

(4) If the plant and equipment is acquired by the ACP, AMTP or ASP under a sale and leaseback arrangement, the maximum claimable value for allowable plant and equipment is:

(a) the amount claimed for the previous investment; or

(b) if the previous investment has not been covered in a previous return — the maximum claimable value, worked out under subregulation (2) or (6), for the plant and equipment in relation to the previous investment.
(5) If the plant and equipment is acquired by the ACP, AMTP or ASP under an operating lease, the maximum claimable value for allowable plant and equipment, for a quarter, is:

(a) the total amount paid as rent under the lease in that quarter for any period within the period:

   (i) starting:

      (A) at the beginning of the period of 2 years before the ATS year for the ACP, AMTP or ASP; or

      (B) if at the time referred to in sub-subparagraph (A) the plant and equipment is not in Australia — on the day when the plant and equipment is imported into Australia; and

   (ii) ending at the end of 31 December 2020; or

(b) if the plant and equipment is imported into Australia in that quarter — the total amount paid as rent under the lease before the end of that quarter for any period within the period:

   (i) beginning on the day when the plant and equipment is imported into Australia; and

   (ii) ending at the end of 31 December 2020.

(6) If the plant and equipment is built or made by the ACP, AMTP or ASP, the maximum claimable value for allowable plant and equipment, for a quarter, is:

(a) the value of the plant or equipment recorded in the ACP, AMTP or ASP accounts or register of assets; or

(b) if the plant and equipment (the new plant and equipment) is part of an existing plant and equipment — the total net increase, recorded in the ACP, AMTP or ASP accounts or register of assets for that quarter, in the value of the existing plant or equipment as a result of the building and making of the new plant and equipment.
Part 1 Preliminary
Division 1.2 Eligible investment and eligible production

Regulation 1.20

(7) Despite anything in subregulations (2) to (6), if an expenditure (however described) is to be taken into account in working out the maximum claimable value for allowable plant and equipment and the expenditure includes an amount of GST payable on the supply to which the expenditure relates, the expenditure is to be reduced by the amount of GST for the purpose of working out the maximum claimable value for allowable plant and equipment.

Note 1 If an investment involves the ACP, AMTP or ASP entering into a transaction with another person, regulation 1.28 states that the value of the investment is to be determined on the basis that the ACP, AMTP or ASP and the other person are at arm’s length.

Note 2 See regulations 1.30 to 1.33 for how to determine arm’s length amounts.

1.20 Allowable research and development

(1) An ATS participant may claim the following kinds of research and development activities as allowable research and development:

(a) activities that are directly related to the design, development, engineering or production of motor vehicles, engines, engine components, automotive components, automotive machine tools or automotive tooling;
(b) activities that are undertaken for the purpose of:
   (i) acquiring new knowledge; or
   (ii) creating new or improved materials, products, devices, production processes or services.

(2) Without limiting subregulation (1), research and development of a kind mentioned in that subregulation includes the following activities:

(a) basic and strategic research;
(b) industrial and engineering design;
(c) production engineering;
(d) development activities relating to the building and testing of prototypes;
(e) re-engineering and modification of existing products and processes;
(f) development and installation of purpose-designed systems for:
   (i) quality assurance and process control; or
   (ii) materials or movement control;

(g) testing and modification of new production systems (either purpose-built or interchangeable) to achieve repeatability within specified tolerances;

(h) obtaining industrial property rights, including:
   (i) the preparation and lodging of applications and other documents that are required to be lodged, in Australia or elsewhere, for the initial grant or registration of the rights; and
   (ii) the initial grant or registration of the rights, in Australia or elsewhere;

(i) activities conducted at the ATS participant’s own expense that are aimed at improving a product or process of an engine or component supplier to the ATS participant.

(3) However, research and development of a kind mentioned in subregulation (1) does not include the following activities:
   (a) the design of buildings (whether or not the buildings are to be used to house a research and development activity);
   (b) the design and installation of financial management systems;
   (c) market research, market testing, market development or sales promotion (including customer surveys);
   (d) routine quality control;
   (e) management studies or efficiency surveys;
   (f) routine collection of information (other than for the purpose of research and development);
   (g) the acquisition from another ATS participant of technology or the rights to use technology;
   (h) the protection of industrial property rights by legal action;
   (i) for an MVP — research and development mentioned in subregulation (6).
(4) Research and development of the kind mentioned in subregulation (1):

(a) includes research and development conducted by another person (other than a Cooperative Research Centre) on behalf of the ATS participant under a contract with the ATS participant only if:

(i) the research and development is Australian-based research and development; and

(ii) the ATS participant contributes to the direction and management of the research and development; and

(iii) the ATS participant has a proportionate share in any intellectual property resulting from the research and development; and

(iv) the ATS participant is not required to conduct the research and development on behalf of:

(A) another person under a contract with the other person; or

(B) if the ATS participant is an MVP — another ATS participant under a contract with the other ATS participant; and

(b) includes research and development conducted by a Cooperative Research Centre under a contract with the ATS participant only if:

(i) the research and development is Australian-based research and development; and

(ii) the ATS participant contributes to the direction and management of the research and development; and

(iii) the ATS participant has the right to use any intellectual property resulting from the research and development; and

(iv) the ATS participant is not required to conduct the research and development on behalf of:

(A) another person under a contract with the other person; or

(B) if the ATS participant is an MVP — another ATS participant under a contract with the other ATS participant; and
(c) includes Australian-based research and development conducted by the ATS participant only if the ATS participant is not required to conduct the research and development on behalf of:

(i) another person under a contract with the other person; or

(ii) if the ATS participant is an MVP — another ATS participant under a contract with the other ATS participant; and

(d) includes offshore research and development conducted by the ATS participant only if:

(i) the requirements mentioned in subregulation (5) are met; and

(ii) the ATS participant is not required to conduct the research and development on behalf of:

(A) another person under a contract with the other person; or

(B) if the ATS participant is an MVP — another ATS participant under a contract with the other ATS participant.

(5) For subparagraph (4) (d) (i), the requirements are:

(a) the offshore research and development is necessary to tailor the ATS participant’s Australian-based research and development to a particular market; or

(b) all of the following:

(i) the offshore research and development is necessary to lever the ATS participant’s Australian-based research and development of an offshore research and development program;

(ii) the offshore research and development contributes directly to the offshore research and development program;

(iii) the ATS participant contributes to the direction and management of the offshore research and development program, and has a proportionate share in any intellectual property resulting from the program.
(6) An MVP may not claim research and development that is directed:
   (a) at the production of automotive components (other than engines or engine components) for the MVP’s own use; or
   (b) at the production of automotive machine tools or automotive tooling for the MVP’s own use; or
   (c) at facilitating the provision of automotive services for the MVP’s own use.

(7) In this regulation:
   engine or component supplier means a supplier of:
   (a) engines, engine components, automotive components, automotive machine tools or automotive tooling; or
   (b) parts or materials for anything mentioned in paragraph (a).

1.21 Maximum claimable value for allowable research and development for MVP

(1) For an MVP, this regulation and regulation 1.23 set out the method of working out the maximum claimable value for allowable research and development of the kind mentioned in subregulation 1.20 (1).

(2) If the research and development is Australian-based research and development conducted by an MVP, the maximum claimable value for allowable research and development, for a quarter, is:

\[ F \times 1.2 \]

where:

\( F \) is the sum of each of the following amounts of expenditure that has been recognised, in that quarter in the MVP’s accounts, as an expense in accordance with Australian Accounting Standards:

(a) labour costs, within the meaning of subregulation 1.23 (1), in respect of employees carrying out, or directly supporting, the research and development;
(b) the cost, within the meaning of subregulation 1.23 (2), of training and developing employees referred to in paragraph (a);

(c) if the research and development covers an activity that has been carried out by a person under a contract for services with the MVP, the amount payable, under the contract, to the person for the activity;

(d) the cost of purchasing, for the purposes of the research and development, any plant and equipment that is consumed or tested to destruction within 12 months after its purchase;

(e) the cost of purchasing, for the purposes of the research and development, any work order materials.

Examples for paragraph (a) of employees carrying out research and development
Engineers, researchers and technical staff.

Examples for paragraph (a) of employees directly supporting research and development
Skilled or unskilled craftspersons, secretarial and clerical staff, and executive staff involved in the management of scientific or technical aspects of the research and development.

Example for paragraph (e)
Materials used in manufacturing prototypes of automotive components.

Note The acquisition of allowable plant and equipment for research and development that is recognised, in the MVP’s accounts, as an asset in accordance with Australian Accounting Standards is dealt with in regulation 1.17.

(3) If the research and development is Australian-based research and development conducted by another person (other than a Cooperative Research Centre) on behalf of the MVP under a contract with the MVP, the maximum claimable value for allowable research and development, for a quarter, is the total amount of claims, enforceable by the other person against the MVP, that arise, in that quarter, for any work done in relation to the research and development.
(4) If the research and development is Australian-based research and development conducted by a Cooperative Research Centre under a contract with the MVP, the maximum claimable value for allowable research and development, for a quarter, is the total amount of contribution made, in that quarter, by the MVP to the Centre in relation to the research and development.

(5) If the research and development is offshore research and development conducted by the MVP, the maximum claimable value for allowable research and development, for a quarter, is the lesser of sum A and sum B worked out under subregulations (6) and (7).

(6) For subregulation (5), sum A is the sum of each of the following amounts of expenditure that has been recognised, in that quarter in the MVP’s accounts, as an expense in accordance with Australian Accounting Standards:

(a) labour costs, within the meaning of subregulation 1.23 (1), in respect of employees carrying out, or directly supporting, the research and development;

(b) the cost, within the meaning of subregulation 1.23 (2), of training and developing the employees referred to in paragraph (a);

(c) if the research and development covers an activity that has been carried out by a person under a contract for services with the MVP, the amount payable, under the contract, to the person for the activity;

(d) the cost of acquiring, for the purposes of the research and development, any plant and equipment that is consumed or tested to destruction within 12 months after its acquisition;

(e) the cost of purchasing, for the purposes of the research and development, any work order materials.

Examples for paragraph (a) of employees carrying out research and development

Engineers, researchers and technical staff.

Examples for paragraph (a) of employees directly supporting research and development

Skilled or unskilled craftpersons, secretarial and clerical staff, and executive staff involved in the management of scientific or technical aspects of the research and development.
Example for paragraph (e)

Materials used in manufacturing prototypes of automotive components.

Note The acquisition of allowable plant and equipment for research and development that is recognised, in the MVP’s accounts, as an asset in accordance with Australian Accounting Standards is dealt with in regulation 1.17.

(7) For subregulation (5), sum B is:

\[ G \times 0.2 \]

where:

\( G \) is the sum of the maximum claimable values for Australian-based research and development conducted by, or on behalf of, the MVP worked out under subregulations (2) to and (4) for that quarter.

1.22 Maximum claimable value for allowable research and development for ACP, AMTP or ASP

(1) For an ACP, AMTP, or ASP, this regulation and regulation 1.23 set out the method of calculating the maximum claimable value for allowable research and development of the kind mentioned in subregulation 1.20 (1).

(2) If the research and development is Australian-based research and development conducted by the ACP, AMTP or ASP, the maximum claimable value for allowable research and development, for a quarter, is the sum of each of the following amounts of expenditure that has been recognised, in that quarter in the ACP, AMTP or ASP accounts, as an expense in accordance with the Australian Accounting Standards:

(a) labour costs, within the meaning of subregulation 1.23 (1), in respect of employees carrying out, or directly supporting, the research and development;

(b) the cost, within the meaning of subregulation 1.23 (2), of training and developing employees referred to in paragraph (a);

(c) if the research and development covers an activity that has been carried out by a person under a contract for services with the ACP, AMTP or ASP, the amount payable, under the contract, to the person for the activity;
(d) the cost of purchasing, for the purposes of the research and
development, any plant and equipment that is consumed or
tested to destruction within 12 months after its purchase;

(e) the cost of purchasing, for the purposes of the research and
development, any work order materials.

Examples for paragraph (a) of employees carrying out research and
development

Engineers, researchers and technical staff.

Examples for paragraph (a) of employees directly supporting research and
development

Skilled or unskilled craftspersons, secretarial and clerical staff, and
evacutive staff involved in the management of scientific or technical aspects
of the research and development.

Example for paragraph (e)

Materials used in manufacturing prototypes of automotive components.

Note  The acquisition of allowable plant and equipment for research and
development that is recognised, in the ACP, AMTP or ASP accounts, as an
asset in accordance with Australian Accounting Standards is dealt with in
regulation 1.17.

(3) If the research and development is Australian-based research
and development conducted by another person (other than a
Cooperative Research Centre) on behalf of the ACP, AMTP or
ASP under a contract with the ACP, AMTP or ASP, the
maximum claimable value for allowable research and
development, for a quarter, is the total amount of claims,
enforceable by the other person against the ACP, AMTP or
ASP, that arise, in that quarter, for any work done in relation to
the research and development.

(4) If the research and development is Australian-based research
and development conducted by a Cooperative Research Centre
under a contract with the ACP, AMTP or ASP, the maximum
claimable value for allowable research and development, for a
quarter, is the total amount of contribution made, in that
quarter, by the ACP, AMTP or ASP to the Centre in relation to
the research and development.
(5) If the research and development is offshore research and development conducted by the ACP, AMTP or ASP, the maximum claimable value for allowable research and development, for a quarter, is the lesser of sum A and sum B worked out under subregulations (6) and (7).

(6) For subregulation (5), sum A is the sum of each of the following amounts of expenditure that has been recognised, in that quarter in the ACP, AMTP or ASP accounts, as an expense in accordance with the Australian Accounting Standards:

(a) labour costs, within the meaning of subregulation 1.23 (1), in respect of employees carrying out, or directly supporting, the research and development;

(b) the cost, within the meaning of subregulation 1.23 (2), of training and developing of employees referred to in paragraph (a);

(c) if the research and development covers an activity that has been carried out by a person under a contract for services with the ACP, AMTP or ASP, the amount payable, under the contract, to the person for the activity;

(d) the cost of acquiring, for the purposes of the research and development, any plant and equipment that is consumed or tested to destruction within 12 months after its acquisition;

(e) the cost of purchasing, for the purposes of the research and development, any work order materials.

Examples for paragraph (a) of employees carrying out research and development
Engineers, researchers and technical staff.

Examples for paragraph (a) of employees directly supporting research and development
Skilled or unskilled craftspersons, secretarial and clerical staff, and executive staff involved in the management of scientific or technical aspects of the research and development.

Example for paragraph (e)
Materials used in manufacturing prototypes of automotive components.

Note The acquisition of allowable plant and equipment for research and development that is recognised, in the ACP, AMTP or ASP accounts, as an asset in accordance with Australian Accounting Standards is dealt with in regulation 1.17.
(7) For subregulation (5), sum B is:

\[ G \times 0.2 \]

where:

\( G \) is the sum of the maximum claimable values for Australian-based research and development conducted by, or on behalf of the ACP, AMTP or ASP, worked out under subregulations (2) to (4) for that quarter.

1.23 Meaning of labour costs and costs of training and development

(1) For the purpose of working out the maximum claimable value for allowable research and development, labour costs in respect of an employee includes each of the following that applies to the employee:

(a) salary or wages;
(b) allowances, bonuses, overtime and penalty rate payments;
(c) leave payments for annual leave, sick leave and long service leave;
(d) superannuation fund contributions, payroll tax and workers’ compensation insurance premiums;
(e) the cost of providing any vehicle or other benefits included in the employee’s remuneration package;

but does not include any fringe benefits tax payable in respect of the benefits referred to in paragraph (e).

(2) Without limiting paragraphs 1.21 (2) (b) and (6) (b) or 1.22 (2) (b) and (6) (b), the cost of:

(a) training and developing an employee of an MVP; or
(b) training and developing an employee of an ACP, AMTP or ASP;

includes the following:

(c) costs of graduate development programs;
(d) costs of training to use software specifically related to the research and development;
(e) labour costs in respect of employees directly supporting or assisting, or directly involved in, the training and development of the employee.

(3) Despite anything in regulation 1.21 or 1.22:

(a) if an amount referred to in either of those regulations relates to activities other than those covered by the allowable research and development, only the part of the amount that relates to the research and development is to be taken into account; and

(b) if an expenditure, however described, is to be taken into account in working out the maximum claimable value for allowable research and development and the expenditure includes an amount of GST payable on the supply to which the expenditure relates, the expenditure is to be reduced by the amount of GST for the purpose of working out the maximum claimable value for allowable research and development.

Example for paragraph (a)

If an employee transfers from the area of the company responsible for sales to the area responsible for research and development, leave payments for any leave accrued while the employee was with the sales area cannot be included in the labour costs in respect of the employee for the purposes of working out the maximum claimable value for allowable research and development under regulation 1.21 or 1.22.

Note I If an investment involves the ATS participant entering into a transaction with another person, regulation 1.25 states that the value of the investment is to be determined on the basis that the ATS participant and the other person are at arm’s length.

Note 2 See regulations 1.30 to 1.33 for how to determine arm’s length amounts.

(4) In this regulation:

fringe benefits tax has the meaning given by subsection 136 (1) of the Fringe Benefits Tax Assessment Act 1986.
Subdivision 1.2.3 Eligible production

1.24 Allowable production for MVP

An ATS participant who is an MVP may claim the production of motor vehicles, engines and engine components as allowable production.

*Note* The terms *engine, engine components* and *motor vehicle* are defined in subregulation 1.5 (1).

1.25 Maximum claimable value for allowable production for MVP

(1) For an MVP, the method of working out the maximum claimable value for allowable production is worked out in accordance with subregulation (2).

(2) The maximum claimable value of MVP production achieved by an MVP in a quarter is:

\[(A - B) \times 1.1\]

where:

- **A** is the total revenue from sales from MVP production in the quarter.
- **B** is the sum of the following amounts:
  
  (a) the amount (based on recorded invoice prices) incurred by the MVP in the quarter for the purchase of any engines or engine components:
    
    (i) contributing to the MVP’s production of motor vehicles; and
    
    (ii) manufactured by another MVP;
  
  (b) the amount of any MVP payments to dealers made by the MVP in the quarter in respect of MVP production;
  
  (c) the amount of any payments made by the MVP directly to end consumers in the quarter in respect of MVP production, and not deducted from the sales invoice price;
  
  (d) the amount of any ex-factory transport, freight, delivery or insurance charges included in the sales invoice price;
(e) the amount of any indirect taxes incurred by the MVP in respect of MVP production in the quarter, and not recoverable by the MVP.

(3) For the purpose of working out, for the quarter, total revenue from sales from MVP production, the sale price of a vehicle, engine or engine component is taken to be:

(a) if an invoice has been issued for the sale in the quarter — the invoice price; or

(b) if a sale is taken to have occurred but no invoice has been issued — the average invoice price, in the quarter, for a vehicle, engine or engine component of that kind; excluding the amount of any indirect tax in relation to the sale that would otherwise be included in the calculation.

(4) For subregulation (1), all amounts are to be expressed in Australian dollars.

(5) In this regulation:

*dealer* means a dealer in motor vehicles.

*MVP payment to a dealer*, in relation to a sale from MVP production to a dealer, means a payment (whether by way of a hold-back payment, discount, bonus or otherwise) by the MVP to a dealer that is not deducted from the invoice price and results in a reduction of the price paid by the dealer, but does not include a warranty payment.

*Note* Regulation 1.28 provides that whenever it is necessary to determine the production value of any motor vehicles, engines or engine components sold by an ATS participant to another person, that production value is to be determined on the basis that the ATS participant and the other person are at arm’s length.
Division 1.3 Determining eligible investments and value of arm’s length transactions

Subdivision 1.3.1 Determining when investment is eligible investment

1.26 When investment is taken to have occurred

(1) An investment in plant and equipment undertaken by an ATS participant is taken to have occurred for these Regulations:

(a) if the investment is by way of acquiring the plant and equipment by purchase or under a finance lease (other than under a sale and leaseback arrangement):

(i) at the time when the plant and equipment is recognised, in the ATS participant’s accounts, as an asset in accordance with Australian Accounting Standards; or

(ii) if at the time referred to in subparagraph (i) the plant and equipment is not in Australia — at the time when the plant and equipment is imported into Australia; or

(b) if the investment is by way of acquiring the plant and equipment under an operating lease:

(i) every time rent is paid under the lease; or

(ii) if at a time referred to in subparagraph (i) the plant and equipment is not in Australia — at the time when the plant and equipment is imported into Australia and every time rent is paid under the lease after the plant and equipment has been so imported; or
(c) if the investment is by way of building or making the plant and equipment:

(i) at the time when the plant and equipment is recognised, in the ATS participant’s accounts, as an asset in accordance with Australian Accounting Standards, or at the time when the plant or equipment is recorded in the ATS participant’s register of assets, whichever is the earlier; or

(ii) if the plant and equipment (the new plant and equipment) is part of an existing plant and equipment — at the time when the building or making of the new plant and equipment is recognised, in the ATS participant’s accounts, as an increase in asset value in accordance with Australian Accounting Standards, or at the time when the building or making of the new plant or equipment is recorded in the ATS participant’s register of assets, whichever is the earlier; or

(d) if the investment is by way of acquiring a spare or replacement part mentioned in paragraph 1.17 (2) (c) — at the time when the spare or replacement part is recognised, in the ATS participant’s accounts, as an asset in accordance with Australian Accounting Standards.

(2) An investment in plant and equipment undertaken by an ATS participant by way of acquiring the plant and equipment under a sale and leaseback arrangement is taken to have occurred at the time when the previous investment would, apart from regulation 1.27, have been taken to have occurred under these Regulations.

(3) An investment in research and development undertaken by an ATS participant is taken to have occurred for these Regulations:

(a) if the investment is by way of research and development conducted by the ATS participant — every time an expenditure incurred in relation to the research and development is recognised, in the ATS participant’s accounts, in accordance with Australian Accounting Standards; or
Part 1 Preliminary
Division 1.3 Determining eligible investments and value of arm’s length transactions

Regulation 1.27

(b) if the investment is by way of research and development conducted by another person (other than a Cooperative Research Centre) on behalf of the ATS participant under a contract with the ATS participant — every time a claim, enforceable by the other person against the ATS participant, arises for any work done in relation to the research and development; or

c) if the investment is by way of research and development conducted by a Cooperative Research Centre under a contract with the ATS participant — every time the ATS participant makes a contribution to the Centre in relation to the research and development.

1.27 Sale of eligible investment by ATS participant

If allowable plant and equipment or allowable research and development is sold by, or on behalf of, an ATS participant, the investment in that plant and equipment or research and development is to be treated, for the purposes of the Scheme, with effect from the start of the quarter in which that sale took place, as if it had never occurred.

Subdivision 1.3.2 Arm’s length transactions

1.28 Production value, sales value or investment determined as if transaction at arm’s length

(1) For the Scheme, if it is necessary to determine:

(a) the production value or sales value of any motor vehicles, engines or engine components sold by an ATS participant to another person; or

(b) the production value or sales value of any other goods or services sold by an ATS participant to another person; that production value or sales value is to be determined on the basis that the ATS participant and other person are at arm’s length.
(2) For the Scheme:
   (a) if it is necessary to determine the value of any investment in plant and equipment, or in research and development, undertaken by an ATS participant; and
   (b) that investment involves the ATS participant entering into a transaction with another person;
the value of that investment is to be determined on the basis that the ATS participant and the other person are at arm’s length.

1.29 Determining the circumstances when parties treated as not being at arm’s length

(1) The Secretary must decide that the parties to a transaction mentioned in subregulation 1.28 (1) or (2) are to be treated as not being at arm’s length if the parties are related or associated parties.

(2) Without limiting subregulation (1), parties are taken to be related or associated parties if:
   (a) they are a group of related bodies corporate; or
   (b) one party controls the other within the meaning of section 50AA of the Corporations Act 2001; or
   (c) the parties are involved in a cartel or other price-fixing arrangement.

1.30 Production value or sales value when parties treated as not being at arm’s length

(1) To determine what would have been the production value or sales value of the motor vehicles, engines or engine components or other goods or services to which the transaction relates had the parties been at arm’s length, the Secretary must:
   (a) consider the value determined by the ATS participant to be the production value or sales value; and
   (b) either:
      (i) accept the value determined by the ATS participant; or
(ii) reject the value determined by the ATS participant and determine a different value.

(2) The ATS participant and the Secretary must use a method set out in regulation 1.33 to determine the production value or sales value of the transaction.

1.31 Value of investment in research and development when parties treated as not being at arm’s length

(1) To determine what would have been the value of investment in research and development to which the transaction relates had the parties been at arm’s length, the Secretary must:

(a) consider the value determined by the ATS participant to be the value of investment in research and development; and

(b) either:

(i) accept the value determined by the ATS participant; or

(ii) reject the value determined by the ATS participant and determine a different value.

(2) The ATS participant and the Secretary must use a method set out in regulation 1.33 to determine the amount of the investment.

1.32 Value of investment in plant and equipment when parties treated as not being at arm’s length

(1) To determine what would have been the value of investment in plant and equipment to which the transaction relates had the parties been at arm’s length, the Secretary must comply with subregulations (2) to (5).

(2) If the value of investment in plant and equipment estimated by the ATS participant using a method set out in regulation 1.33 is less than $500 000, the Secretary must accept the value.
(3) If the value of investment estimated by the ATS participant using a method set out in regulation 1.33 is $500,000 or more, the ATS participant must obtain a certification of the valuation from an independent valuer who is professionally qualified to make a certification in relation to investments in plant and equipment.

(4) The Secretary may do one of the following:
   (a) accept the certification of the valuation by the ATS participant’s valuer;
   (b) reject the certification by the ATS participant’s valuer and arrange, with the agreement of the ATS participant, for a second independent valuer to make a certification;
   (c) if the Secretary and the ATS participant do not agree on appointment of a second independent valuer — appoint an independent valuer of the Secretary’s own choosing to make a valuation.

(5) If the Secretary takes action under paragraph (4) (b) or (c), the Secretary must accept the value certified by the second valuer as the value that would have been the value of investment in plant and equipment had the parties been at arm’s length.

1.33 Methods for determining value of transactions when parties treated as not being at arm’s length

(1) For regulation 1.30, 1.31 or 1.32, the value of a transaction (the relevant transaction) must be determined using a method mentioned in subregulation (2) or (3).

(2) A method that involves:
   (a) referring to the value of another transaction (a comparable transaction), between parties who are not related or associated parties, that:
      (i) is of the same kind as the relevant transaction; and
      (ii) takes place about the same time as the relevant transaction; and
      (iii) involves the same or similar terms as the relevant transaction; and
Part 1 Preliminary
Division 1.3 Determining eligible investments and value of arm’s length transactions

**Regulation 1.33**

(b) working out an adjusted value by adding to, or subtracting from, the value referred to in paragraph (a), any necessary adjustment to take into account any difference between the relevant transaction and the comparable transaction; and

(c) determining the value the relevant transaction would have been, based on the adjusted values, had the parties been at arm’s length.

(3) A method, or combination of methods, that can accurately assess the value in the particular case and which takes into account the following:

(a) the kind of transaction;

(b) the terms of the transaction;

(c) the business structure, strategy and processes of the ATS participant;

(d) the market conditions at the time of the transaction;

(e) other commercial and economic realities at the time of the transaction;

(f) whether the method, or combination of methods, produces the highest degree of comparability in the particular case.
Part 2  Registration under Scheme

Division 2.1  Rules about registration

2.1  Rules about number of registrations a person may have under Scheme

(1) A person may only have one current registration under the Scheme as one of the following:
(a) an MVP;
(b) an ACP;
(c) an AMTP;
(d) an ASP.

(2) If an ATS participant is registered as an individual ATS participant under the Scheme, a group of related bodies corporate of which the ATS participant is a member must not be registered as an ATS participant while the ATS participant is registered individually.

(3) If an ATS participant is a group of related bodies corporate, a member of that group must not be registered as an individual ATS participant under the Scheme while:
(a) the member remains a member of the group; and
(b) the group is an ATS participant.

2.2  Rule about registrations under Scheme needing to further object of Act

(1) This regulation applies to an applicant for registration under the Scheme other than an applicant who has been given permission by the Minister under regulation 2.8 to apply for registration.
(2) If an applicant to whom this regulation applies meets the requirements for registration under the Scheme, the Secretary, under regulation 2.15, must not grant the application for registration unless the Secretary is satisfied that registering the applicant would further the object set out in subsection 3 (1) of the Act.

(3) For subregulation (2), it is more likely than not that providing assistance to the applicant would not further the object of the Act if:

(a) one or more applicants that are applying for registration individually are related companies that, before 1 July 2010, were part of a single entity; and

(b) there are indications that those companies will reform as a single entity after the Scheme finishes.

(4) In this regulation, requirements for registration under the Scheme means all of the registration requirements applicable to an applicant to whom this regulation applies including the requirements set out in:

(a) if the applicant is applying for registration as an MVP — paragraph 2.4 (1) (a) or (b); or

(b) if the applicant is applying for registration as an ACP — paragraph 2.5 (1) (a) or (b); or

(c) if the applicant is applying for registration as an AMTP — paragraph 2.6 (1) (a) or (b); or

(d) if the applicant is applying for registration as an ASP — paragraph 2.7 (1) (a) or (b).

2.3 Rule about effect of further applications for registration on existing registrations

If:

(a) investment by a person is treated as eligible investment by an ATS participant under regulation 2.34; and

(b) as a result the ATS participant applies for another registration under the Scheme; and
(c) the Secretary grants the later application;
the original registration ceases to have effect on the day immediately before the day on which the later application for registration is granted.

### Division 2.2 Applications for registration

#### 2.4 Application for MVP registration

(1) A person who is a motor vehicle producer may apply to the Secretary for registration as an MVP if:

(a) in the 12 months preceding that application, the person produced in Australia at least 30 000 motor vehicles or at least 30 000 engines; or

(b) if paragraph (a) does not apply — the person is able to demonstrate, to the satisfaction of the Secretary, that in the 12 months following the application, the person is likely to produce in Australia at least 30 000 motor vehicles or at least 30 000 engines; or

(c) if neither paragraph (a) nor (b) applies — the person has been given permission by the Minister, under regulation 2.8, to apply for registration as an MVP.

(2) The application must be made in accordance with Division 2.4.

#### 2.5 Application for ACP registration

(1) A person who is a producer of automotive components may apply to the Secretary for registration as an ACP if:

(a) in the 12 months preceding the application:

(i) the person produced in Australia at least one kind of automotive component for use as original equipment in at least 30 000 motor vehicles or in at least 30 000 engines and the production value of the component was at least $500 000; or

(ii) the production value of the automotive components produced by the person in Australia as original equipment was at least $500 000 and comprised at least 50% of the production value of all automotive components produced by the person; or
(b) if paragraph (a) does not apply — the person is able to demonstrate, to the satisfaction of the Secretary, that for the ATS year to which the application for registration relates:

(i) the person is likely to produce in Australia at least one kind of automotive component for use as original equipment in at least 30,000 motor vehicles or at least 30,000 engines and the production value of the component will be at least $500,000; or

(ii) the production value of the automotive components produced by the person in Australia as original equipment is likely to be at least $500,000 and to comprise at least 50% of the production value of all automotive components produced by the person; or

(c) if neither paragraph (a) nor (b) applies — the person has been given permission by the Minister, under regulation 2.8, to apply for registration as an ACP.

(2) The application must be made in accordance with Division 2.4.

(3) If paragraph (1) (a) applies, the production value of automotive components produced by an applicant for registration as an ACP is the total revenue from sales of the automotive components (excluding indirect tax) in the 12 months preceding the application.

(4) If paragraph (1) (b) applies, the production value of automotive components produced by an applicant for registration as an ACP is the likely total revenue from sales of the automotive components (excluding indirect tax) in the 12 months following the application.

2.6 Application for AMTP registration

(1) A person who is a producer of automotive machine tools or automotive tooling may apply to the Secretary for registration as an AMTP if:

(a) in the 12 months preceding the application:

(i) the production value of automotive machine tools and automotive tooling produced in Australia by that person was at least $500,000; and
(ii) at least 50% of that value was for automotive machine tools and automotive tooling used to produce original equipment; or

(b) if paragraph (a) does not apply — the person is able to demonstrate, to the satisfaction of the Secretary, that for the ATS year to which the application for registration relates:

(i) the production value of automotive machine tools and automotive tooling produced in Australia by that person is likely to be at least $500 000; and

(ii) at least 50% of that value is likely to be for automotive machine tools and automotive tooling used to produce original equipment; or

(c) if neither paragraph (a) nor (b) applies — the person has been given permission by the Minister, under regulation 2.8, to apply for registration as an AMTP.

(2) The application must be made in accordance with Division 2.4.

(3) If paragraph (1) (a) applies, the production value of automotive machine tools or automotive tooling produced by an applicant for registration as an AMTP is the total revenue from sales of the tools or tooling (excluding indirect tax) in the 12 months preceding the application.

(4) If paragraph (1) (b) applies, the production value of automotive machine tools or automotive tooling produced by an applicant for registration as an AMTP is the likely total revenue from sales of the tools or tooling (excluding indirect tax) in the 12 months following the application.

### 2.7 Application for ASP registration

(1) A person who is a provider of automotive services may apply to the Secretary for registration as an ASP if:

(a) in the 12 months preceding the application:

(i) the production value of automotive services provided by that person in Australia was at least $500 000; and
(ii) at least 50% of that production value was for services related to the production of motor vehicles or original equipment; or

(b) if paragraph (a) does not apply — the person is able to demonstrate, to the satisfaction of the Secretary, that for the ATS year to which the application for registration relates:

(i) the production value of automotive services proposed to be provided by that person in Australia is likely to be at least $500 000; and

(ii) at least 50% of that production value is likely to be for services related to the production of motor vehicles or original equipment; or

(c) if neither paragraph (a) nor (b) applies — the person has been given permission by the Minister, under regulation 2.8, to apply for registration as an ASP.

(2) The application must be made in accordance with Division 2.4.

(3) If paragraph (1) (a) applies, the production value of automotive services produced by an applicant for registration as an ASP is the total revenue from provision of the services (excluding indirect tax) in the 12 months preceding the application.

(4) If paragraph (1) (b) applies, the production value of automotive services produced by an applicant for registration as an ASP is the likely total revenue from provision of the services (excluding indirect tax) in the 12 months following the application.

2.8 Ministerial permission to apply for registration in national interest

(1) A person may seek the Minister’s permission to apply for registration as an ATS participant on the basis that the registration would be in the national interest.

(2) If the Minister is satisfied that, subject to the person’s meeting all the registration requirements other than the requirements set out in subregulation (3), it would be in the national interest for the person to be so registered, the Minister may, by notice in writing, give that permission.
(3) Requirements about which the Minister does not have to be satisfied are:
   (a) if the person seeks permission to apply for registration as an MVP — paragraph 2.4 (1) (a) or (b); or
   (b) if the person seeks permission to apply for registration as an ACP — paragraph 2.5 (1) (a) or (b); or
   (c) if the person seeks permission to apply for registration as an AMTP — paragraph 2.6 (1) (a) or (b); or
   (d) if the person seeks permission to apply for registration as an ASP — paragraph 2.7 (1) (a) or (b).

(4) In determining whether to grant permission under this regulation for a person to apply for registration, the Minister must have regard to the following matters:
   (a) whether the person would have been able to comply with the normal threshold eligibility requirements but for circumstances beyond the person’s control such as a natural disaster, an industrial accident or an industrial dispute;
   (b) whether the registration of the person would significantly enhance the competitiveness of the Australian automotive industry;
   (c) whether the registration of the person would provide significant benefits either to the Australian automotive industry or to the Australian economy;
   (d) whether the registration of the person would introduce significant innovations in the Australian automotive industry;
   (e) whether the registration of the person would generate significant employment or investment opportunities in the Australian automotive industry;
   (f) whether the registration of the person would have significant strategic, regional or environmental impacts;
   (g) whether the registration of the person would significantly improve environmental outcomes;
   (h) whether the registration of the person would significantly promote the development of workforce skills.
(5) To assist the Minister in determining whether to give the permission, the person must produce to the Minister, within a period specified by the Minister:
   (a) any information or documents that the Minister considers are likely to be relevant to the Minister’s consideration of the application for that permission; and
   (b) a business plan of a kind that will, if the Minister grants the approval to apply for registration, be required to be produced to the Secretary under subregulation 2.12 (3).

(6) If the Minister grants a person permission to apply for registration, the Minister must, in the decision granting that permission, set out the conditions to which the permission, and any subsequent registration, is subject.

(7) For the avoidance of doubt, conditions determined by the Minister under subregulation (6) are additional to any other requirements under these Regulations.

Division 2.3  Participation in Scheme by groups of companies

2.9 Certain groups of companies may seek permission to apply for registration as single entity

(1) A group of related bodies corporate may apply to the Secretary for permission to seek registration as an ATS participant as if the group were a single person.

(2) The application must:
   (a) be in writing; and
   (b) be in an approved form; and
   (c) contain such information as the form requires; and
   (d) be accompanied by such documents as are necessary to establish that the companies are related; and
   (e) without limiting the generality of paragraph (b), must nominate the member of the group who:
      (i) is a resident of Australia; and
      (ii) is to act as the nominated contact person; and
2.10 Dealing with application for permission by group of related bodies corporate

(1) The Secretary:
   (a) may consider an application by a group of related bodies corporate for permission to seek registration as an ATS participant at the same time as considering an application by the group for registration, under regulation 2.15; and
   (b) must determine whether to grant permission before the end of the consideration period referred to in subregulation 2.15 (4).

(2) The Secretary must grant permission if the Secretary is satisfied that:
   (a) the group has provided the information and documents required by the approved form; and
   (b) the group is made up of related bodies corporate; and
   (c) no company in the group is registered as an ATS participant, or is an applicant for registration as an ATS participant, other than as a member of the group.

(3) If the Secretary is not satisfied about a matter set out in paragraphs (2) (a) to (c), the Secretary must refuse permission.

(4) A decision to grant permission must specify the conditions, if any, to which the application is subject.

(5) A decision to grant permission takes effect:
   (a) on a day specified in the decision; or
   (b) if no day is specified — on the day on which the decision is given.

2.11 Legal status of a group permitted to make application for registration

(1) If the Secretary grants a group permission to make an application to be registered as an ATS participant, the matters in subregulation (2) are to be determined:
   (a) as if the group possessed legal personality; and
(b) as if any act or thing done by or to the nominated contact person were an act or thing done by or to the group.

(2) For subregulation (1), the matters are:
(a) the group’s eligibility to make an application for registration; and
(b) if the application for registration is refused — the group’s right to seek a review of the decision; and
(c) if the application for registration is granted — the group’s rights and liabilities under the Act and these Regulations.

(3) In dealing with an application by a group given permission to apply for registration as an ATS participant, the Secretary may treat all acts or things done by or to members of the group as if they were acts or things done by or to the group considered together.

(4) The Secretary must decide that the group is not a fit and proper person within the meaning of regulation 2.16 if satisfied, at any time, that, in relation to a group of companies given permission to seek registration as an ATS participant or in relation to a group of companies that are so registered:
(a) any company in the group would not be a fit and proper person if that company were making application for registration in its own right; or
(b) any director of a company in the group and any officer or shareholder of a company in the group having the capacity to influence the management of that company, would not be a fit and proper person if that director, officer or shareholder were making application for registration in his or her own right.

Division 2.4 Formal requirements for, and consideration of, applications for registration

2.12 Content of application for registration

(1) An application for registration as an ATS participant must:
(a) be in writing; and
(b) be in an approved form; and  
(c) be accompanied by such documentation (if any) as the form requires; and  
(d) be signed in the manner indicated in the form; and  
(e) be lodged in accordance with regulation 2.13.

(2) Without limiting paragraph (1) (c), an application for registration must include information or documents as required by the form that relates to the applicant’s capability to comply with the document retention obligations under regulation 2.26.

(3) Without limiting paragraph (1) (c), an applicant for registration must include a business plan of the applicant, containing:  
(a) details of the strategies that will enable the applicant to carry on sustainable operations in the Australian automotive industry for a 5 year period starting on 1 January of the year of registration; and  
(b) operational plans, details of financial commitment and controls, financial projections and assumptions on which forecasts are based; and  
(c) details about how the applicant will meet the object of the Act, particularly economic sustainability, in a way that will improve environmental outcomes and promote the development of workforce skills; and  
(d) such other particulars as are required by the form in respect of the period or periods specified in the form.

(4) A period specified in the form in relation to a business plan may commence on or after 1 January of the ATS year in which registration is sought.

2.13 Lodgement of applications

(1) An application for registration as an ATS participant must be lodged in accordance with this regulation.

(2) The application may:  
(a) be left at a place allocated for lodgement of applications specified in the approved form; or  
(b) be posted by pre-paid post to a postal address specified in the approved form; or
(c) be sent by fax to a fax number specified in the approved form; or
(d) be sent by electronic transmission to the Department’s website.

2.14 When to apply

(1) A person may apply for registration before 1 January of the ATS year for which registration is sought.

(2) The Secretary must not accept an application for registration for an ATS year after 1 January of that year.

(3) For the avoidance of doubt, the persons to whom this regulation applies include a person who has been granted permission to apply for registration under regulation 2.8.

2.15 Consideration of registration applications

(1) The Secretary must examine each application for registration and, as soon as practicable, before the end of the consideration period, decide whether to grant the application.

(2) If the Secretary is satisfied:
   (a) that the applicant is eligible to apply for that registration; and
   (b) that the applicant has provided the information and documents (if any) required by the approved form; and
   (c) that the applicant can comply with the relevant document retention obligations set out in regulation 2.26; and
   (d) where the applicant is a natural person — that the applicant is a fit and proper person; and
   (e) where the applicant is a company — that the company is a fit and proper person; and
   (f) where the applicant is a company — that each of the directors, and each officer or shareholder who is in a position to influence the management of the company, is a fit and proper person; and
(g) that registering the applicant would, as required by subregulation 2.2 (2), further the object set out in subsection 3 (1) of the Act;

the Secretary must grant the application and inform the applicant accordingly.

Note Regulation 2.16 sets out the matters to which the Secretary must have regard in determining whether a person is a fit and proper person.

(3) If the Secretary is not satisfied of a matter set out in paragraphs (2) (a) to (g), the Secretary must refuse the application and inform the applicant in accordance with subregulation 5.1 (1).

(4) For subregulation (1), the consideration period is the period starting on the day the application is lodged and ending:

(a) unless paragraph (b) applies — 60 days after that day; or

(b) if the Secretary requires the applicant, under regulation 2.17, to provide further information by a specified day and the applicant duly provides the information or explains why the information cannot be provided — at the end of the period of 60 days referred to in paragraph (a) extended by the period taken to comply with the requirement or provide the explanation.

2.16 Fit and proper person

(1) For paragraph 2.15 (2) (d) or (f), in determining whether a person is a fit and proper person, the Secretary must have regard to the following matters:

(a) any conviction of the person of an offence punishable by imprisonment for one year or longer:

(i) against a law of the Commonwealth; or

(ii) against a law of a State or Territory;

if that offence was committed within the 10 years immediately before the application for registration under the Scheme;

(b) any conviction of the person of an offence against the law of a foreign country;

(c) whether the person is an insolvent under administration;
Regulation 2.16

(d) whether a misleading statement was made by or in relation to the person in the application for registration;

(e) if the misleading statement was false, whether the person making the statement knew that it was false.

(2) For paragraph 2.15 (2) (e), in determining whether a company is a fit and proper person, the Secretary must have regard to the following matters:

(a) any conviction of the company for an offence punishable by a fine of $5 000 or more:
   (i) against a law of the Commonwealth; or
   (ii) against a law of a State or Territory;

(b) any conviction of the company of an offence against the law of a foreign country;

(c) if that offence was committed within the 10 years immediately before the application for registration under the Scheme and at a time when any person who is presently a director of the company, or an officer or shareholder of the company who presently is in a position to influence the management of the company, was such a director, officer or shareholder;

(d) whether the company is under administration within the meaning of the Corporations Act 2001;

(e) whether the company has executed a deed of company arrangement under Part 5.3A of that Act that has not yet terminated;

(f) the company is being wound up;

(g) whether a receiver of the property, or part of the property, of the company has been appointed.

(3) Nothing in this regulation affects the operation of Part VIIC of the Crimes Act 1914 (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).
2.17 Secretary may seek further information

(1) If the Secretary, on examination of an application, considers that he or she needs further information before being able to make a decision under subregulation 2.15 (1), the Secretary may, by notice in writing given to the applicant, require the applicant to provide the information to the Secretary within a period specified in the notice.

(2) If the applicant fails or refuses, within the period specified, either to provide the further information or a reasonable explanation as to why it cannot be provided, the applicant is taken, at the end of that period, to have withdrawn the application.

2.18 Period of effect of registration

Start of period of effect

(1) If an application for registration is granted (including an application made following the Minister’s permission, under regulation 2.8), the registration has effect on and from 1 January of the ATS year in relation to which it is made.

End of period of effect — application without Minister’s permission

(2) If the application for registration was not made following the Minister’s permission under regulation 2.8, the registration ends on the earlier of:
   (a) 31 March 2021; and
   (b) deregistration under regulation 2.28.

Note An ATS participant may ask to be deregistered under paragraph 2.28 (2) (c).

End of period of effect — application with Minister’s permission

(3) If:
   (a) the application for registration was made following the Minister’s permission under regulation 2.8; and
(b) the ATS participant is not able to comply with the conditions of registration set out in Division 2.5;
the registration ends on 31 December of the second ATS year following the registration.

Note Regulation 2.14 limits when applications for registration can be made.

(4) If:
(a) the application for registration was made following the Minister’s permission under regulation 2.8; and
(b) the ATS participant is able to comply with the conditions of registration set out in Division 2.5;
the registration ends on the earlier of:
(c) 31 March 2021; and
(d) deregistration under regulation 2.28.

Note An ATS participant may ask to be deregistered under paragraph 2.28 (2) (c).

2.19 Registration does not confer entitlement
Registration under the Scheme does not, by itself, confer an entitlement on an ATS participant to assistance under the Scheme.

Division 2.5 Conditions of registration

2.20 General compliance
It is a condition of registration for an ATS participant that the ATS participant comply with the requirements of the Act and the Scheme.

2.21 Condition of MVP registration
(1) It is a condition of registration for an ATS participant who is an MVP (other than an ATS participant mentioned in subregulation (2)), to produce in Australia, in each ATS year following the ATS year in which the person’s registration takes effect, at least 30 000 motor vehicles or at least 30 000 engines.
(2) If the MVP:
   (a) had been registered following the Minister’s permission, under regulation 2.8, to apply for that registration; or
   (b) has continuing registration following the Minister’s permission under regulation 2.25;
   the MVP must comply with the conditions relating to ongoing registration as specified by the Minister in granting that permission.

### 2.22 Condition of ACP registration

(1) It is a condition of registration for an ATS participant who is an ACP (other than an ATS participant mentioned in subregulation (3)) that:
   (a) the ACP produce in Australia at least one kind of automotive component for use as original equipment in at least 30 000 motor vehicles or in at least 30 000 engines and that the production value of the component be at least $500 000; or
   (b) the production value of the automotive components produced in Australia by the ACP as original equipment is at least $500 000 and comprises at least 50% of the production value of all automotive components produced by the ACP.

(2) In subregulation (1):
   (a) the ACP must meet the requirement in each ATS year following the ATS year in which the ACP’s registration takes effect; and
   (b) the production value of automotive components produced by the ACP is the total revenue from sales of the automotive components (excluding indirect tax) in the preceding 12 months.

(3) If the ACP:
   (a) had been registered following the Minister’s permission, under regulation 2.8, to apply for that registration; or
Condition of AMTP registration

(1) It is a condition of registration for an ATS participant who is an AMTP (other than an ATS participant mentioned in subregulation (3)) that:

(a) the production value of the automotive machine tools and automotive tooling produced by the AMTP in Australia is at least $500,000; and

(b) at least 50% of that production value must have been for automotive machine tools and automotive tooling used to produce original equipment.

(2) In subregulation (1):

(a) the AMTP must meet the requirement in each ATS year following the ATS year in which the AMTP’s registration takes effect; and

(b) the production value of automotive machine tools or automotive tooling produced by the AMTP is the total revenue from sales of the tools or tooling (excluding indirect tax) in the preceding 12 months.

(3) If the AMTP:

(a) had been registered following the Minister’s permission, under regulation 2.8, to apply for that registration; or

(b) has continuing registration following the Minister’s permission under regulation 2.25; the AMTP must comply with the conditions relating to ongoing registration specified by the Minister in granting that permission.
2.24 **Condition of ASP registration**

(1) It is a condition of registration for an ATS participant who is an ASP (other than an ATS participant mentioned in subregulation (3)) that:

(a) the production value of the automotive services provided by that ASP in Australia must be at least $500,000; and

(b) at least 50% of that production value must have been for services related to the production of motor vehicles or original equipment.

(2) In subregulation (1):

(a) the ASP must meet the requirement in each ATS year following the ATS year in which the ASP's registration takes effect; and

(b) the production value of automotive services produced by the ASP is the total revenue from provision of the services (excluding indirect tax) in the preceding 12 months.

(3) If the ASP:

(a) had been registered following the Minister’s permission, under regulation 2.8, to apply for that registration; or

(b) has continuing registration following the Minister’s permission under regulation 2.25;

the ASP must comply with the conditions relating to ongoing registration specified by the Minister in granting that permission.

2.25 **Ministerial permission to continue registration in national interest**

(1) An ATS participant, other than an ATS participant registered following the Minister’s permission under regulation 2.8, may seek the Minister’s permission to continue registration as an ATS participant on the basis that the registration would be in the national interest.
(2) If the Minister is satisfied that, subject to the ATS participant’s meeting all the conditions of registration other than the conditions set out in subregulation (3), it would be in the national interest for the ATS participant to continue being registered, the Minister may, by notice in writing, give that permission.

(3) Conditions that the Minister does not have to be satisfied the ATS participant is meeting are:
   (a) if the ATS participant is an MVP — subregulation 2.21 (1); or
   (b) if the ATS participant is an ACP — subregulations 2.22 (1) and (2); or
   (c) if the ATS participant is an AMTP — subregulations 2.23 (1) and (2); or
   (d) if the ATS participant is an ASP — subregulations 2.24 (1) and (2).

(4) In determining whether to grant permission under this regulation for an ATS participant to continue registration, the Minister must have regard to the following matters:
   (a) whether the ATS participant would have been able to comply with the normal threshold eligibility requirements but for circumstances beyond the ATS participant’s control such as a natural disaster, an industrial accident or an industrial dispute;
   (b) whether the continued registration of the ATS participant would significantly enhance the competitiveness of the Australian automotive industry;
   (c) whether the continued registration of the ATS participant would provide significant benefits either to the Australian automotive industry or to the Australian economy;
   (d) whether the continued registration of the ATS participant would introduce significant innovations in the Australian automotive industry;
   (e) whether the continued registration of the ATS participant would generate significant employment or investment opportunities in the Australian automotive industry;
(f) whether the continued registration of the ATS participant would have significant strategic, regional or environmental impacts;

(g) whether the continued registration of the ATS participant would significantly improve environmental outcomes;

(h) whether the continued registration of the ATS participant would significantly promote the development of workforce skills.

(5) To assist the Minister in determining whether to give that permission, the ATS participant must produce to the Minister, within a period specified by the Minister:

(a) any information or documents that the Minister considers are likely to be relevant to the Minister’s consideration of the application for that permission; and

(b) an updated business plan of a kind required to be produced to the Secretary under regulation 2.27.

(6) If the Minister grants an ATS participant permission to continue registration, the Minister must, in the decision granting that permission, set out the conditions to which the ongoing registration of the ATS participant is subject.

(7) For the avoidance of doubt, conditions determined by the Minister under subregulation (6) are additional to any other requirements under these Regulations.

(8) The Minister must not grant an ATS participant permission to continue registration under this regulation for a period of more than 2 successive ATS years.

2.26 Document retention obligations

(1) It is a condition of registration that an ATS participant must maintain, or create and maintain, documents that evidence all the particulars contained in each quarterly return provided by the ATS participant.

(2) The documents must be maintained by the ATS participant for 5 years after the lodging of the return concerned.
(3) A person is taken to have complied with the requirements under subregulation (1) if:
   (a) the ATS participant is required to give to another person a document that must be maintained under subregulation (1):
       (i) by a law of the Commonwealth, of a State or a Territory; or
       (ii) in accordance with ordinary commercial practice; and
   (b) after giving the document to that other person, the ATS participant maintains a true copy of the document certified in accordance with subregulation (4) for the period that the document would be required to be maintained under subregulation (2).

(4) The ATS participant may certify a true copy of the document for the purposes of subregulation (3), as the case requires, by attaching to the copy a certificate signed by the ATS participant:
   (a) stating that the copy is a true copy of the original document; and
   (b) stating that the original document has been given to another person for a reason set out in that subregulation; and
   (c) providing particulars of that reason.

Note: Regulation 6.4 imposes an ongoing obligation to retain these records after a person ceases to be an ATS participant.

2.27 Update of business plan

(1) It is a condition of registration that an ATS participant provide the Secretary with an update of the business plan provided by the ATS participant under subregulation 2.12 (3), in accordance with the approved form.

(2) The update must include:
   (a) in accordance with any Order made under regulation 6.7:
       (i) details about how the ATS participant is meeting the object set out in subsection 3 (1) of the Act, particularly economic sustainability; and
(ii) information concerning any activities of the ATS participant directed to improving environmental outcomes and promoting the development of workforce skills; and

(b) any other information for the relevant ATS year that is required in the approved form.

(3) The ATS participant must provide the update within 45 days, or such longer period as the Secretary allows, after the end of the third quarter of each ATS year in which the ATS participant is registered.

(4) Each update must cover the 5 year period starting on 1 January of the next year following the date by which it is to be provided under this regulation.

(5) In this regulation:

third quarter means the period of 3 months commencing on 1 July of an ATS year.

### Division 2.6 Deregistration

#### 2.28 Deregistration

(1) The reasons for deregistration are set out in subregulations (2), (4) and (5).

(2) The Secretary must deregister an ATS participant if, at any time:

(a) the Secretary is satisfied that the ATS participant is not likely, or has failed, to comply with a condition of registration in Division 2.5; or

(b) the Secretary is satisfied that, were the ATS participant to be applying for registration at that time, the ATS participant would not be a fit and proper person within the meaning of regulation 2.16; or

(c) the ATS participant asks the Secretary to be deregistered as an ATS participant.
(3) In determining whether or not, if an ATS participant were applying for registration at a particular time, the ATS participant would or would not be a fit and proper person within the meaning of regulation 2.16, that regulation has affect as if a misleading statement made in a quarterly return were a misleading statement made in the application for registration.

(4) The Secretary must deregister an ATS participant in the following circumstances:

(a) if the ATS participant is an MVP:
   (i) the MVP was registered on the basis that, in the ATS year to which the application for registration relates, the MVP was likely to do the things set out in paragraph 2.4 (1) (b); and
   (ii) at any time during the 12 months following the application, the Secretary determines that it is unlikely that the MVP will be able to do those things;

(b) if the ATS participant is an ACP:
   (i) the ACP was registered on the basis that, in the ATS year to which the application for registration relates, the ACP was likely to do the things set out in subparagraphs 2.5 (1) (b) (i) and (ii); and
   (ii) at any time during the 12 months following the application, the Secretary determines that it is unlikely that the ACP will be able to do those things;

(c) if the ATS participant is an AMTP:
   (i) the AMTP was registered on the basis that, in the ATS year to which the application for registration relates, the AMTP was likely to do the things set out in subparagraphs 2.6 (1) (b) (i) and (ii); and
   (ii) at any time during the 12 months following the application, the Secretary determines that it is unlikely that the AMTP will be able to do those things;
(d) if the ATS participant is an ASP:
   (i) the ASP was registered on the basis that, in the ATS year to which the application for registration relates, the ASP was likely to do the things set out in subparagraphs 2.7 (1) (b) (i) and (ii); and
   (ii) at any time during the 12 months following the application, the Secretary determines that it is unlikely that the ASP will be able to do those things.

(5) The Secretary must deregister an ATS participant if:
   (a) the ATS participant was registered on the basis that the ATS participant’s registration would further the object in subsection 3 (1) of the Act (as required by subregulation 2.2 (2)); and
   (b) the Secretary determines that the registration does not further the object of the Act.

Division 2.7 Transfer of registration and investment

Subdivision 2.7.1 Transfer of registration

2.29 Meaning of business

In this subdivision:

*business*, of a transferor, includes a part of the business of a transferor for which the whole of the eligible investment in relation to the production of goods and provision of services in Australia was undertaken.

2.30 Transfer of registration on transfer of business

(1) A transfer of registration under the Scheme is not permitted except in accordance with this regulation.

(2) If an ATS participant (the *transferor*) transfers the transferor’s business to another person who is not an ATS participant (the *transferee*), the transferee may apply to the Secretary for a transfer of registration.
(3) An application for a transfer of registration must:
(a) be in writing; and
(b) be in an approved form; and
(c) be accompanied by such documentation (if any) as the form requires; and
(d) be signed in the manner indicated in the form; and
(e) include the following:
   (i) details of the relationship (if any) between the transferor and the transferee;
   (ii) a business case for the transfer of the business;
   (iii) a business plan incorporating the transferred business in accordance with subregulation 2.12 (3);
   (iv) the date, or proposed date, of effect of the transfer of the business.

(4) The Secretary may:
(a) approve the transfer of registration, with or without conditions; or
(b) refuse to approve the transfer of registration.

(5) However, the Secretary must not approve a transfer of registration if any of the following applies:
(a) the business transferred does not include the whole of the eligible investment undertaken by the transferor;
(b) there are reasonable grounds for believing that the primary purpose of the transfer of the business is to create eligibility for a payment of assistance under the Scheme;
(c) the amount of assistance to which the transferee would be entitled in respect of eligible investment incurred by the transferor before the transfer would be more than the amount of assistance to which the transferor would have been entitled if the business had not been transferred;
(d) the Secretary is not satisfied that the transferee is able to meet the requirements set out in subregulation 2.15 (2);
(e) the Secretary is not satisfied that the transferee is able to comply with the conditions of registration set out in Division 2.5.
(6) If a matter set out in paragraphs (5) (a) to (e) applies, the Secretary must inform the transferee, in writing, that the transfer is refused and provide reasons for that refusal.

(7) If the Secretary approves the transfer of registration, the Secretary must notify the transferee of the approval.

2.31 Secretary may seek further information

(1) If the Secretary, on examination of an application for transfer of registration, considers that he or she needs further information before being able to make a decision under regulation 2.30, the Secretary may give the transferee notice in writing requesting the transferee provide the information to the Secretary within a period specified in the notice.

(2) If the transferee fails or refuses, within the period specified, either to provide the further information or a reasonable explanation as to why it cannot be so provided, the transferee is taken, at the end of that period, to have withdrawn the application.

2.32 Effect of transfer of registration

(1) Upon the approval of a transfer of registration under regulation 2.30, the transferor ceases to have any eligibility under the Scheme in relation to eligible investment.

(2) For the purposes of the Scheme:
   (a) any eligible investment undertaken by the transferor in the quarter in which the transfer takes place before the transfer of the business is taken to have been undertaken by the transferee; and
   (b) anything done by the transferor before the transfer of registration for the purposes of the Scheme (including any quarterly return) is taken to have been done by the transferee; and
   (c) anything:
      (i) that has not been done before the transfer of registration by the transferor for the purpose of making a quarterly return for a payment of assistance; and
Regulation 2.32

(ii) that could, but for the transfer of registration, have been done by the transferor on or after the day on which registration was transferred; may be done by the transferee.

(3) To avoid doubt:
(a) any investment by a transferor or a transferee that was not eligible investment in the quarter in which the transfer took place before the transfer of the registration, does not, by reason of the transfer, become eligible investment; and
(b) consideration paid by a transferee for the transfer of the business, or for any anticipated entitlement under the Scheme, is not eligible investment; and
(c) immediately after the transfer of registration, a transferee is in an eligible start-up period for the purpose of the sales-based cap in subregulation 3.11 (2) only if the transferor was in an eligible start-up period immediately before the time of the transfer of registration.

2.33 Effect of transfer on sales-based cap

(1) For subregulation 3.11 (1), the total sales value for a transferee for the year preceding the ATS year in which the transfer was approved (the relevant year) is taken to be the sum of:
(a) the sales value of the business of the transferor for the relevant year; and
(b) the total sales value (if any) of the business of the transferee for the relevant year.

(2) For subregulation 3.11 (2), the total of the eligible start-up investment amount for the transferee for the ATS year in which the registration is transferred (the relevant year) is taken to be the sum of:
(a) the eligible start-up investment amount of the transferor for the relevant year; and
(b) the eligible start-up investment amount (if any) of the transferee for the relevant year.
Subdivision 2.7.2 Transfer of investment

2.34 When investment undertaken by a person may be treated as investment undertaken by another person who is an ATS participant

(1) The Secretary may, in the circumstances set out in subregulation (2), treat investment undertaken by a person who may or may not be an ATS participant (the original investor) as eligible investment undertaken by another person who is an ATS participant (the ATS participant).

(2) The circumstances are:
   (a) the ATS participant must apply, in an approved form, to the Secretary; and
   (b) the ATS participant must include with the application:
      (i) a business case setting out why the investment by the original investor should be treated as eligible investment of the ATS participant; and
      (ii) an updated business plan incorporating the eligible investment of the original investor, in accordance with subregulation 2.12 (3); and
   (c) the Secretary must make a determination that the circumstances of the relationship between the original investor and the ATS participant are as follows:
      (i) the ATS participant is a group of related bodies corporate of which the original investor becomes a member after the investment undertaken by the original investor has occurred;
      (ii) the ATS participant has taken over the entire business operation from the original investor, other than by acquiring shares in the original investor;
      (iii) the ATS participant has taken over the part of that business operation for which the investment was undertaken; and
   (d) after making a determination under paragraph (c), the Secretary must make a determination under subregulation (3) or (5), as appropriate, in relation to the investment.
Original investor ATS participant when investment made

(3) The Secretary may determine in writing that the eligible investment is taken to be eligible investment undertaken by the ATS participant if:

(a) the original investor was an ATS participant at the time that the investment was undertaken; and

(b) the investment is clearly identified and was eligible investment; and

(c) the Secretary is satisfied that:

(i) the original investor and the ATS participant have a contractual arrangement under which the original investor relinquishes any right to claim assistance under the Scheme in relation to the investment; and

(ii) it is reasonable in all of the circumstances to allow the investment to be treated as eligible investment undertaken by the ATS participant.

Original investor not ATS participant when investment made

(4) Subregulation (5) applies if:

(a) the original investor was not an ATS participant at the time the investment was undertaken; and

(b) the Secretary is satisfied that:

(i) the investment is clearly identified; and

(ii) if the investment had been undertaken by an ATS participant, the investment would be eligible investment specified by the Secretary; and

(iii) the original investor and the ATS participant have a contractual arrangement under which the original investor relinquishes any right to claim assistance under the Scheme in relation to the investment should the original investor subsequently seek registration as an ATS participant; and

(iv) it is reasonable in all of the circumstances to allow the investment by the original investor to be treated as eligible investment undertaken by the ATS participant.
(5) The Secretary may determine in writing that the investment mentioned in subregulation (4) is:
(a) eligible investment specified by the Secretary; and
(b) taken to be investment undertaken by the ATS participant.

Note The Department may publish guidelines on its website about the kinds of circumstances in which the Secretary may treat particular investment as eligible investment.

2.35 When deemed investment is taken to have occurred

Investment that is determined by the Secretary, under regulation 2.34, to be investment undertaken by an ATS participant, is taken to have occurred:
(a) if the original investor has covered the original investment in a previous return:
   (i) at the time when the original investment is taken to have occurred under regulation 1.26; or
   (ii) if the original investment is in plant and equipment or research and development that has been sold to the ATS participant, and the sale formed part of the circumstances because of which the Secretary made the relevant determination — at the time when the original investment would, apart from regulation 1.27, have been taken to have occurred under regulation 1.26; or
(b) if the original investor was an ATS participant at the time the original investment was undertaken, and has not covered the original investment in a previous return:
   (i) at the time when the original investment is taken to have occurred under regulation 1.26; or
   (ii) if the original investment is in plant and equipment or research and development that has been sold to the ATS participant, and the sale formed part of the circumstances because of which the Secretary made the relevant determination — at the time when the original investment would, apart from regulation 1.27, have been taken to have occurred under regulation 1.26; or
(c) if the original investor was not an ATS participant at the time the original investment was undertaken but has since been an ATS participant, and has not covered the original investment in a previous return — at the time when the original investment is taken to have occurred under regulation 1.26; or

(d) if the original investor neither was an ATS participant at the time the original investment was undertaken nor has since been an ATS participant — at the time when the original investment would have been taken to have occurred under regulation 1.26 if the original investor were an ATS participant.

**Note** Deemed investment, original investment and original investor are defined in subregulation 1.5 (1).

### 2.36 Effect of determination on sales-based cap

(1) For subregulation 3.11 (1), the total sales value for an ATS participant for the year preceding the ATS year in which the determination under subregulation 2.34 (3) or (5) was made (the **relevant year**) is taken to be the sum of:

(a) the sales value of the goods sold and services provided in relation to the eligible investment of the original investor for the relevant year; and

(b) the total sales value (if any) of the eligible investments of the ATS participant for the relevant year.

(2) For subregulation 3.11 (2), the total of the eligible start-up investment amount for the ATS participant for the ATS year in which the determination under subregulation 2.34 (3) or (5) was made (the relevant year) is taken to be the sum of:

(a) the eligible start-up investment amount of the original investor for the relevant year; and

(b) the eligible start-up investment amount (if any) of the ATS participant for the relevant year.
Part 3 Payments under the Scheme

Division 3.1 Making of quarterly returns

3.1 ATS participants to make quarterly returns

(1) An ATS participant must provide a return to the Secretary within 45 days (or within such longer period as the Secretary, in special circumstances, allows) after the end of each quarter in an ATS year.

(2) Each quarterly return must:
   (a) be made in writing, in a manner set out in subregulation (3); and
   (b) be in an approved form.

(3) An ATS participant must make a quarterly return by any one of the following means:
   (a) if the approved form for the quarterly return specifies a place where returns may be made — by leaving the return at that place;
   (b) if the approved form specifies a postal address to which a return may be posted — by sending the return by prepaid post to that address;
   (c) if the approved form specifies a fax number to which an electronic fax of the return can be sent — by sending an electronic fax of the return to that number;
   (d) if the Department establishes or modifies an information system to receive an electronic communication of the return — by sending the return by electronic communication in a manner indicated in the approved form or otherwise approved by the Secretary.

3.2 Making quarterly return does not confer entitlement

The making of a quarterly return under the Scheme does not, by itself, confer an entitlement on an ATS participant to assistance under the Scheme.
3.3 Contents of MVPs' returns

An MVP’s quarterly return must set out:
(a) particulars of all MVP production achieved by the MVP in that quarter and the production value of that production; and
(b) particulars of the expenditure on eligible investments undertaken by the MVP in that quarter; and
(c) particulars of the sales value by the MVP in that quarter of:
   (i) motor vehicles, engines and engine components; and
   (ii) automotive components (other than engines or engine components) and automotive machine tools and automotive tooling; and
   (iii) automotive services; and
(d) particulars of any other Commonwealth assistance, within the meaning of Order made under regulation 3.12, provided in respect of the production referred to in paragraph (a) and the investment referred to in paragraph (b); and
(e) any other particulars required by the form.

Note Regulation 1.25 provides for working out production value of MVP production.

3.4 Contents of ACPs' returns

An ACP’s quarterly return must set out:
(a) particulars of the expenditure on eligible investments undertaken by the ACP in that quarter; and
(b) particulars of the sales value by the ACP in that quarter of:
   (i) automotive components, automotive machine tools and automotive tooling; and
   (ii) automotive services; and
(c) particulars of any other Commonwealth assistance, within the meaning of an Order made under regulation 3.12, provided in respect of eligible investments referred to in paragraph (a); and
(d) any other particulars required by the form.
3.5 Contents of AMTPs’ returns
An AMTP’s return must set out:
(a) particulars of the expenditure on eligible investments undertaken by the AMTP in that quarter; and
(b) particulars of the sales value by the AMTP in that quarter of automotive machine tools and automotive tooling; and
(c) particulars of the sales value by the AMTP in that quarter of automotive services; and
(d) particulars of any other Commonwealth assistance, within the meaning of an Order made under regulation 3.12, provided in respect of eligible investments referred to in paragraph (a); and
(e) any other particulars required by the form.

3.6 Contents of ASPs’ returns
An ASP’s quarterly return must set out:
(a) particulars of the expenditure on eligible investments undertaken by the ASP in that quarter; and
(b) particulars of the sales value by the ASP in that quarter of automotive services; and
(c) particulars of any other Commonwealth assistance, within the meaning of an Order made under regulation 3.12, provided in respect of eligible investments referred to in paragraph (a); and
(d) any other particulars required by the form.

3.7 Rules concerning returns
(1) If an ATS participant, in providing a return for a quarter, other than the final quarter for an ATS year, fails to cover:
   (a) any particular MVP production achieved (in the case of an MVP); or
   (b) any particular investment undertaken;
   by the ATS participant in that quarter, that production or investment may be covered in the return for a later quarter in the same ATS year.
(2) If production achieved or investment undertaken by an ATS participant is covered in a later return as provided for in subregulation (1), it is to be treated, for all purposes of the Scheme, as if it were production achieved or investment undertaken in the quarter in which it is reported and not in the quarter in which it was actually achieved or undertaken.

(3) If production achieved or investment undertaken by an ATS participant is not covered in a later return as provided for in subregulation (1), it is to be treated, for all purposes of the Scheme, as if it had never been achieved or undertaken.

(4) If an ATS participant, in providing a return in respect of the final quarter for an ATS year, fails to cover any particular:
(a) MVP production achieved (in the case of an MVP); or
(b) investment undertaken;
by the ATS participant in that quarter, that production or investment is to be treated, for all purposes of the Scheme, as if it had never been achieved or undertaken.

(5) If an ATS participant makes a return in respect of a particular quarter then, for the purposes of that return:
(a) the ATS participant is treated as having been in existence for each of the relevant quarters in respect of that quarter whether or not the ATS participant was in existence; but
(b) the ATS participant is treated as having undertaken no eligible investments in each such relevant quarter unless the ATS participant in fact undertook such investments in that relevant quarter.

### 3.8 Further information about quarterly return

(1) The Secretary may send a written notice to an ATS participant who has lodged a quarterly return, requiring the ATS participant to provide the information specified in the notice by the day specified in the notice.

(2) The ATS participant must comply with a notice under subregulation (1) within the time specified by the Secretary in the notice.
(3) The Secretary is not required to assess the return, or make a payment of assistance, until the ATS participant complies with the notice.

### Division 3.2 Caps on Scheme and ATS participants

#### 3.9 Capped assistance for ATS years

Subject to section 8 of the Act, for each ATS year of the Scheme listed in the table below, the Secretary must not make a payment of capped assistance that in total exceeds the amount specified for the ATS year (the *ATS year cap*).

<table>
<thead>
<tr>
<th>ATS year</th>
<th>ATS year cap ($)</th>
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<tr>
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<td>9</td>
<td>133 300 000</td>
</tr>
<tr>
<td>10</td>
<td>50 000 000</td>
</tr>
</tbody>
</table>

*Note 1* Subsection 8 (1) of the Act provides that total capped assistance under the Scheme must not exceed $1.5 billion for stage 1 and $1 billion for stage 2.

*Note 2* Subsection 8 (3) of the Act allows payment of unspent capped assistance in a different ATS year in some circumstances.

#### 3.10 Capped assistance divided between MVPs and others

The ATS year cap for capped assistance for an ATS year set out in regulation 3.9 must be divided as follows:

(a) MVPs — 55% of the ATS year cap;
(b) ACPs, AMTPs and ASPs — 45% of the ATS year cap.

3.11 Sales-based cap for payment of assistance

(1) For a particular ATS year, the payment of assistance under the Scheme to an ATS participant, other than during an eligible start-up period of the ATS participant, must not exceed 5% of the sales value of the ATS participant’s goods and services for the previous year.

(2) The payment of assistance to an ATS participant in an eligible start-up period must not exceed 15% of the eligible start-up investment amount of the ATS participant.

Division 3.3 Making of payments of assistance

3.12 Ministerial Order for working out payments of assistance for ATS participants

(1) The Minister must make an Order setting out the following:
   (a) the modulation process for capped assistance to ATS participants, including:
      (i) how amounts of capped assistance are modulated; and
      (ii) how the amount of capped assistance is worked out for an ATS participant; and
      (iii) setting out how the ATS year caps set out in regulation 3.9 are to be divided between MVPs and ATS participants who are not MVPs, as provided for in regulation 3.10; and
      (iv) setting out how the payment of assistance mentioned in regulation 3.11 is to be adjusted so that the total of the payment does not exceed the sales-based cap for an ATS participant provided for in that regulation;
   (b) how uncapped assistance for production by MVPs is calculated;
   (c) what assistance is to be treated as Commonwealth assistance for the purpose of the Scheme;
(d) the quarter in which investment made under ACIS will be treated as eligible investment for the purpose of working out a quarterly payment under the Scheme.

(2) In making an Order, the Minister must:
   (a) have regard to Australia’s international obligations; and
   (b) ensure that the relevant ATS year cap for the ATS year as set out in regulation 3.9 is not exceeded; and
   (c) ensure that, for any ATS year, the sales-based cap on individual ATS participants set out in regulation 3.11 is not exceeded.

(3) An Order is a legislative instrument within the meaning of the Legislative Instruments Act 2003.

### 3.13 Quarterly payments

(1) An ATS participant is entitled to a quarterly payment of assistance if the ATS participant has:
   (a) made an eligible investment or undertaken eligible production in accordance with Division 1.2; and
   (b) made a quarterly return for a quarter within the time permitted under subregulation 3.1 (1); and
   (c) complied with the conditions of registration set out in Division 2.5.

(2) If the Secretary decides that an ATS participant is entitled to be paid assistance under subregulation (1), the Secretary must make a payment of assistance for the quarter to the ATS participant, worked out in accordance with an Order made under regulation 3.12.

(3) The payment under subregulation (2) must be made before the end of the following quarter.

(4) Payments of assistance for a final quarter must not be made after 31 March of the year following the quarter.

(5) If the Secretary decides that the ATS participant is not entitled to be paid assistance in relation to a period covered by a quarterly return, the Secretary must give the ATS participant a notice in accordance with subregulation 5.1 (1).
Regulation 3.14

Note: Regulation 5.3 deals with the right of an ATS participant to have a decision reviewed.

3.14 Inalienability of payments

(1) A payment of assistance under the Scheme may only be made to an ATS participant.

(2) An ATS participant’s payment, or entitlement to a payment, is inalienable, except with the written approval of the Secretary.

(3) For the avoidance of doubt, subregulation (2) prohibits a transfer by means of, or in consequence of, a sale, an assignment, a charge, an execution, a bankruptcy, an insolvency or any other means.

3.15 Condition of payment of assistance

(1) A payment of capped or uncapped assistance to the ATS participant may only be made on the condition that all or part of the payment may be offset or recovered by the Commonwealth as set out in the Scheme.

(2) The Secretary may refuse to make a payment of assistance where the Secretary is satisfied that the ATS participant has failed, or is likely to fail, to comply with the conditions of registration.

Division 3.4 Entitlement to assistance

3.16 Persons not entitled to certain assistance

(1) A person who has or had been paid assistance under the Scheme is not entitled to the assistance if the person received the payment for any of the following reasons:

(a) because of an error made in calculating the amount of the payment (including during the modulation process) or a mistake of fact;

(b) because information given to the Minister, Secretary or delegate of the Secretary was inaccurate or incomplete;

(c) because of a clerical error or mistake;
(d) because the payment:
   (i) was for a transaction for which the person was a party that was not at arm’s length within the meaning of regulation 1.28; and
   (ii) is referrable to a production value, sales value or investment to which the transaction relates that has not been determined as if the parties were at arm’s length.

(2) A person who has or had been paid assistance under the Scheme is not entitled to the assistance if the payment was made for an investment or production that was not eligible investment or eligible production.

(3) If:
   (a) a person has or had been paid certain assistance under the Scheme; and
   (b) an authorised officer, under section 12 of the Act, asks the person:
      (i) to answer a question in relation to the assistance; or
      (ii) within the period provided for in regulation 2.26, to produce a document relating to the assistance; and
   (c) the person does not answer the question or produce the document when asked to;
   the person is not entitled to the assistance under the Scheme.

(4) If the Secretary decides that the ATS participant was not entitled to be paid assistance under the Scheme, the Secretary must give the ATS participant notice in accordance with subregulation 5.1 (1).

Note Regulation 5.3 deals with the right of an ATS participant to have a decision reviewed.
Part 4 Recovery of overpayments

4.1 Scheme debt

(1) All or part of an amount of a quarterly payment of capped or uncapped assistance to an ATS participant that exceeds the amount to which the ATS participant is entitled is recoverable by the Commonwealth as a debt due to the Commonwealth in a court of competent jurisdiction.

(2) A debt under subregulation (1) is a Scheme debt.

(3) Subregulation (1) does not apply to an amount of quarterly payment that was made more than 12 quarters before the current quarter.

4.2 Recovery by offsetting

If an ATS participant is liable to pay a Scheme debt, the Scheme debt may be deducted from one or more quarterly payments of assistance to which the ATS participant is entitled under the Scheme.

4.3 Secretary to issue notice

(1) If the Secretary determines that there is a Scheme debt in relation to an ATS participant, the Secretary must give the ATS participant a notice in writing setting out the following matters:

(a) the amount of the ATS participant’s Scheme debt;

(b) the interest payable on the Scheme debt under regulation 4.4;

(c) the requirement that the Scheme debt and interest payable:

(i) be paid, no more than 30 days after the day on the notice; or

(ii) be recovered by deduction under regulation 4.2 in the next quarter and any subsequent quarter (where the ATS participant’s entitlement in the next quarter is insufficient to cover the debt).
(2) If the ATS participant:
   (a) does not comply with the notice under subregulation (1); and
   (b) has not made an application for review of the Secretary’s decision under subregulation (1) in the time specified in subregulation 5.1 (2);

the Scheme debt may be offset under regulation 4.2.

4.4 Interest payable on Scheme debt

(1) If an ATS participant has a Scheme debt, interest is payable on the debt in accordance with this regulation.

(2) The amount of interest payable on the Scheme debt is as follows:
   (a) if the Scheme debt and interest worked out under this paragraph are paid, or recovered under regulation 4.2:
      (i) within 30 days of the Secretary giving the ATS participant notice of the debt; or
      (ii) if an extension of time for payment has been given under regulation 4.5, within the extended time;

the 90 day bank accepted bill rate less 10 basis points worked out on the Scheme debt from the day the assistance was paid to the ATS participant;

   (b) if any part of the Scheme debt or interest payable under paragraph (a) is not paid within the time mentioned in that paragraph:
      (i) the amount of interest payable under paragraph (a); and
      (ii) 20% per year on any part of the Scheme debt and interest that was not paid within 30 days of the Secretary giving the ATS participant notice of the debt.

(3) However, interest is not payable on the Scheme debt if:
   (a) the Secretary is satisfied that the payment of interest would cause the ATS participant financial hardship; or
Regulation 4.5

(b) the Secretary is satisfied that there was an error made by the Department in the payment of the assistance and has corrected the error.

(4) Interest payable under this regulation is recoverable by the Commonwealth as a debt due to the Commonwealth.

(5) Interest payable under this regulation for a Scheme debt in relation to a payment of uncapped assistance may be offset under regulation 4.2.

(6) Interest payable under this regulation for a Scheme debt in relation to a payment of capped assistance must be paid in cash and not be offset under regulation 4.2.

4.5 Extension of time for payment of Scheme debt

(1) The Secretary may, in a particular case, extend the time for payment of a Scheme debt and interest payable under paragraph 4.4 (2) (a).

(2) The following provisions apply in relation to extensions of time under subregulation (1):
   (a) the ATS participant liable to pay the debt may apply for an extension;
   (b) an application is to be in writing, setting out the reasons for the application, and it is to be made to the Secretary;
   (c) the Secretary’s decision on the application is to be in accordance with subregulation 5.1 (1).

4.6 Recovery from person who owes money to ATS participant

(1) This regulation allows the Commonwealth to collect money from a person who owes money to an ATS participant that has a debt due to the Commonwealth under the Scheme.

(2) The Secretary may direct a person (the third party) who owes, or may later owe, money (the available money) to the ATS participant to pay some or all of the available money to the Commonwealth in accordance with the direction.
(3) The Secretary must give a copy of the direction under subregulation (2) to the ATS participant.

(4) The direction cannot require an amount to be paid to the Commonwealth at a time before it is owed by the third party to the ATS participant.

(5) Any payment made by the third party under this regulation is taken to have been made with the authority of the ATS participant and of all other persons concerned, and the third party is indemnified for the payment.

(6) If the whole of the debt due to the Commonwealth by the ATS participant is discharged before any payment is made by the third party, the Secretary must immediately give notice to the third party of that fact.

(7) The third party is taken to owe money to the ATS participant, whether or not the payment of the money to the ATS participant is dependent on a pre-condition that has not been fulfilled, if:
(a) money is due or accruing by the third party to the ATS participant; or
(b) the third party holds money for or on account of the ATS participant; or
(c) the third party holds money on account of some other person for payment to the ATS participant; or
(d) the third party has authority from some other person to pay money to the ATS participant.
Part 5 Administrative review of decisions

5.1 Request for reconsideration of decision by Secretary

(1) If the Secretary makes a decision of a kind mentioned in regulation 5.3 or 5.6, the Secretary must give the person affected by the decision notice in writing of the decision setting out the reasons for the decision.

(2) The notice must include a statement to the effect that:

(a) if the person is dissatisfied with the decision, the person may request a reconsideration of the decision by the Secretary; and

(b) if the person is dissatisfied with a decision made by the Secretary on that reconsideration confirming or varying the first decision, the person, subject to the Administrative Appeals Tribunal Act 1975, may apply to the Administrative Appeals Tribunal for a review of the decision.

(3) If the person affected by a decision of the Secretary is dissatisfied with the decision, the person may request the Secretary to reconsider the decision.

(4) A request must:

(a) be in writing; and

(b) set out the reasons for the request; and

(c) be given to the Secretary within 30 days after the person is notified of the decision or within such further period as the Secretary allows.

5.2 Reconsideration by Secretary

(1) On receiving a request from a person under regulation 5.1, the Secretary must reconsider the decision.

(2) The Secretary may:

(a) confirm or revoke the decision; or
(b) vary the decision in such manner as the Secretary thinks fit.

(3) If the Secretary does not confirm, revoke or vary the decision before the end of the period of 30 days after the day on which the Secretary receives the request, the Secretary is taken, at the end of that period, to have confirmed the decision.

(4) If the Secretary confirms, revokes or varies the decision before the end of the period mentioned in subregulation (3), the Secretary, by notice in writing given to the person, must inform the person of the result of the reconsideration of the decision and the reasons for confirming, revoking or varying the decision.

(5) The notice must include a statement to the effect that if the person is dissatisfied with the decision so confirmed, revoked or varied, the person, subject to the Administrative Appeals Tribunal Act 1975, may apply to the Administrative Appeals Tribunal for a review of the decision.

(6) An application may be made to the Administrative Appeals Tribunal for a review of the decision within 28 days after the person is given notice of the decision or, if subregulation (3) applies, within 28 days of the day the decision is taken to be confirmed.

5.3 Review of decisions affecting payment of assistance

Application may be made to the Administrative Appeals Tribunal for the review of the following decisions:

(a) a decision by the Secretary under regulation 1.29 that a person was a party to a transaction that was not at arm’s length within the meaning of that regulation;

(b) a decision by the Secretary under regulation 1.30 about the production value or sales value of the motor vehicles, engines, or engine components or other goods and services to which a transaction that has been determined as not being at arm’s length relates;

(c) a decision by the Secretary under regulation 3.8 or 3.15 to refuse payment of assistance to an ATS participant;
Regulation 5.4

(d) a decision by the Secretary under regulation 3.13 that an ATS participant is not entitled to be paid an amount of assistance in relation to a period covered by a quarterly return;
(e) a decision by the Secretary under regulation 3.16 that an ATS participant was not entitled to a payment under the Scheme;
(f) a decision by the Secretary under subregulation 4.3 (1) that a person is liable to pay an amount of Scheme debt.

5.4 Limitations on implementation of court decisions concerning payment of assistance

(1) If, in relation to a decision (the original decision) set out in regulation 5.3:
   (a) application is made for review of the original decision to:
      (i) the Federal Court of Australia or the Federal Magistrates Court under the Administrative Decisions (Judicial Review) Act 1977; or
      (ii) the Federal Court of Australia under section 39B of the Judiciary Act 1903; and
   (b) the court makes a decision in favour of the applicant for review;
      the limitations set out in the following subregulations apply to the implementation of the court’s decision concerning the original decision.

(2) The court’s decision has effect on and from the day that the court made its decision and not before that date.

(3) If the applicant for review is an ATS participant at the time that the court’s decision concerning his or her application is made:
   (a) the decision can only be given effect to if the applicant’s sales-based cap for payment of assistance for the ATS year in which the original decision was made has not been reached; and
   (b) if the limit has not been reached, the decision can only be given effect to the extent of the sales-based cap.

*Note* The sales-based cap on individual ATS participants is set out in regulation 3.11.
5.5 Limitations on implementation of AAT decisions concerning payment of assistance

(1) If, in relation to a decision (the *original decision*) set out in regulation 5.3:
   (a) application is made to the Administrative Appeals Tribunal (*AAT*) for review of the original decision; and
   (b) the AAT makes a decision in favour of the applicant;
the limitations set out in the following subregulations apply to the implementation of the AAT’s decision concerning the original decision.

(2) Despite subsection 43 (6) of the *Administrative Appeals Tribunal Act 1975*, the AAT’s decision has effect on and from the day that the AAT made its decision and not before that date.

(3) If the applicant for review is an ATS participant at the time that the AAT’s decision concerning his or her application is made:
   (a) the decision can only be given effect to if the applicant’s sales-based cap for payment of assistance for the ATS year in which the original decision was made has not been reached; and
   (b) if the limit has not been reached, the decision can only be given effect to the extent of the sales-based cap.

*Note* The sales-based cap on individual ATS participants is set out in regulation 3.11.

5.6 Review of other decisions

Application may be made to the AAT for the review of the following decisions:

(a) a decision by the Secretary under regulation 2.2 that registering the applicant would not further the object set out in subsection 3 (1) of the Act;

(b) a decision by the Secretary under regulation 2.10 to refuse permission to a group of companies to seek registration as an ATS participant as if it were a single person;
Part 5 Administrative review of decisions

Regulation 5.6

(c) a decision by the Secretary under subregulation 2.10 (4) to impose conditions on the grant of permission to a group of companies to seek registration as an ATS participant as if it were a single person;

(d) a decision by the Secretary under regulation 2.15 to refuse to register a person as an MVP, an ACP, an AMTP or an ASP;

(e) a decision by the Secretary under regulation 2.16 that a person is not a fit and proper person;

(f) a decision by the Secretary under regulation 2.28 to deregister an ATS participant;

(g) a decision by the Secretary under subregulation 4.4 (3) that the payment of interest would not cause the ATS participant financial hardship;

(h) a decision by the Secretary under regulation 4.5:
   (i) to refuse an application for an extension of time for the payment of a Scheme debt; or
   (ii) to grant a lesser extension than that applied for;

(i) a decision by the Secretary under regulation 4.6 to direct a third party who owes, or may later owe, money to an ATS participant to pay some or all of the available money to the Commonwealth.
Part 6  Miscellaneous

6.1  Approved forms

The Secretary may approve a form, including an electronic form, by instrument in writing.

6.2  Appointment of authorised officers

(1) The Secretary may, in writing, appoint the following persons to be an authorised officer under the Scheme:
   (a) an officer or employee of the Department;
   (b) any other person.

(2) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the Secretary.

6.3  Identity cards for authorised officers

(1) The Secretary must issue an identity card to an authorised officer that contains the following:
   (a) the full name of the authorised officer;
   (b) a recent photograph of the authorised officer;
   (c) a design or designs that do one or more of the following:
      (i) identify the Department;
      (ii) show that the card has been issued by the Secretary under Commonwealth authority.

(2) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

6.4  Ongoing obligation to maintain records

A person who was an ATS participant must continue to maintain the quarterly return documents mentioned in regulation 2.26 in accordance with the requirements of that regulation.
6.5 Publication of information relating to ATS participants

(1) The Minister may publish the following information about an ATS participant or a person who was an ATS participant:
   (a) that the person is or was an ATS participant and the period of the person’s participation in the Scheme;
   (b) the amount of assistance paid to the person in an ATS year.

(2) The Minister must publish a notice that the Minister has given a person named in the notice permission to:
   (a) apply for registration as an ATS participant; or
   (b) continue registration as an ATS participant;
   on the basis that the registration would be in the national interest.

6.6 Annual report

For paragraph 27A (a) of the Act, the Department’s annual report must, for the 12 month period ending on 31 March in a financial year, include the following:
   (a) the total amount of capped assistance paid to MVPs;
   (b) the total amount of uncapped assistance paid to MVPs;
   (c) the total amount of capped assistance paid to ACPs;
   (d) the total amount of capped assistance paid to AMTPs;
   (e) the total amount of capped assistance paid to ASPs.

6.7 Ministerial Order for reporting progress on meeting object of Act

(1) The Minister must make an Order specifying the following:
   (a) reporting criteria for economic sustainability, improvements in environmental outcomes and development of workforce skills that an ATS participant must use in updating the ATS participant’s business plan;
(b) details to be included in the Department’s annual report of progress towards achieving economic sustainability of the Australian automotive industry in a way that improves environmental outcomes and promotes workforce skills development.

(2) An Order made for the purposes of subregulation (1) is a legislative instrument within the meaning of the Legislative Instruments Act 2003.
Part 7 Transitional arrangements

7.1 Application
This Part applies to a person who is a participant in ACIS on or after commencement of these Regulations.

7.2 Registration as ATS participant
Division 2.4 of these Regulations does not apply to a participant in ACIS who applies for registration as an ATS participant if:
(a) the participant makes an application in accordance with subregulation 2.12 (1) before 1 January 2011; and
(b) the participant provides a business plan that contains the information mentioned in subregulation 2.12 (3); and
(c) the Secretary is satisfied that the participant will, after registration, be able to meet the conditions of registration in Division 2.5.

7.3 Recognition of eligible investments
(1) If a participant in ACIS becomes an ATS participant, investment in plant and equipment, and research and development, that the ATS participant made under ACIS may be treated as eligible investment under the Scheme only if the investment:
(a) is eligible investment within the meaning of regulation 1.15; and
(b) was made during ACIS Stage 2; and
(c) was made in a relevant quarter.

(2) In this regulation:
ACIS Act means the ACIS Administration Act 1999.
ACIS Stage 2 has the meaning given by the ACIS Act.
relevant quarter, in relation to a participant in ACIS who becomes an ATS participant, has the meaning given by the Ministerial Order made under regulation 3.12.
Note