Automotive Transformation Scheme Act 2009

No. 93, 2009

An Act to provide for the establishment of the Automotive Transformation Scheme, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)
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Automotive Transformation Scheme Act 2009

No. 93, 2009

An Act to provide for the establishment of the Automotive Transformation Scheme, and for related purposes

[Assented to 29 September 2009]

The Parliament of Australia enacts:
Part 1 Preliminary

Section 1

Part 1—Preliminary

1 Short title

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

2 Commencement

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

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

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

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

3 Object

(1) The object of this Act is:
(a) to encourage competitive investment and innovation in the
Australian automotive industry; and
(b) to place the industry on an economically sustainable footing;
by providing assistance to a participant in the Automotive
Transformation Scheme based on the participant’s investment if
the investment is of a kind prescribed by the Scheme.

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

4 Definitions

In this Act:

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

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

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

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

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

Federal Court means the Federal Court of Australia.

monitoring powers has the meaning given by section 12.

monitoring warrant means a warrant issued under section 15.

Secretary means the Secretary of the Department.

stage 1 means:
(a) the period beginning on 1 January 2011 and ending on
31 December 2015; and
Part 1 Preliminary

Section 4

(b) January, February and March 2016.

stage 2 means:
(a) the period beginning on 1 January 2016 and ending on 31 December 2020; and
(b) January, February and March 2021.

4 Automotive Transformation Scheme Act 2009 No. 93, 2009
Part 2—The Automotive Transformation Scheme

Division 1—Making the Automotive Transformation Scheme

5 Making the Automotive Transformation Scheme

(1) To further the object of this Act, the regulations must prescribe a scheme (the Automotive Transformation Scheme) about the following matters:
   (a) the registration of participants (ATS participants) by the Secretary;
   (b) the payment of an amount to an ATS participant if certain conditions are satisfied;
   (c) the recovery by the Commonwealth of amounts from ATS participants in prescribed circumstances;
   (d) the payment of interest by an ATS participant on an overpaid amount;
   (e) the review of decisions, and, in respect of decisions of a prescribed kind, the limitations that apply to implementing the Administrative Appeals Tribunal’s decision or a court’s decision about those prescribed kind of decisions;
   (f) the appointment of authorised officers by the Secretary;
   (g) a matter required or permitted by this Act to be included in the Scheme;
   (h) ancillary or incidental matters.

(2) The Automotive Transformation Scheme is to be a self-assessment scheme.

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

The Automotive Transformation Scheme may provide for any or all of the following matters:
   (a) the application process for registration;
Part 2 The Automotive Transformation Scheme
Division 1 Making the Automotive Transformation Scheme

Section 6

(b) the assessment criteria for registration;
(c) the amount of a payment to an ATS participant;
(d) the inalienability of an amount of a payment to an ATS participant, except with the approval of the Secretary;
(e) the deregistration of an ATS participant.
Division 2—Assistance

Subdivision A—Assistance available

7 Kinds of assistance

Assistance under the Automotive Transformation Scheme is of two kinds:
(a) capped assistance; and
(b) uncapped assistance.

8 Amount of capped assistance available

(1) The total amount of capped assistance under the Automotive Transformation Scheme must not exceed:
(a) for stage 1—$1.5 billion; and
(b) for stage 2—$1 billion.

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

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

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

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

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

(5) For the purposes of subsections (1) to (3), an amount of capped assistance recovered by the Commonwealth is treated as if it had never been paid.
Part 2 The Automotive Transformation Scheme
Division 2 Assistance

Section 9

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

Subdivision B—Payments of assistance

9 Payments

Making payments

(1) The Automotive Transformation Scheme must provide that a payment of capped or uncapped assistance to an ATS participant may only be made:

(a) on the condition that all or part of the payment may be offset or recovered by the Commonwealth in the manner and in the circumstances provided for by the Scheme; and

(b) on any other conditions provided for by the Scheme.

Recovering payments

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

Subdivision C—Miscellaneous

10 Appropriation

Capped assistance under the Automotive Transformation Scheme is to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.
Division 3—Monitoring powers

Subdivision A—Powers for monitoring compliance

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

(1) For the purposes of:
   (a) finding out whether the Automotive Transformation Scheme has been complied with; or
   (b) assessing the correctness of information provided under the Scheme;

an authorised officer may enter any premises if:
   (c) the occupier of the premises consents to the entry; or
   (d) the entry is made under a monitoring warrant.

Note: Paragraph (c)—see section 13.

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

12 Powers available for monitoring compliance

(1) An authorised officer who enters premises under subsection 11(1) may exercise the following monitoring powers:
   (a) the power to search the premises and any thing on the premises;
   (b) the power to inspect, examine, take measurements of, or conduct tests (including by the taking of samples) concerning, any thing on the premises;
   (c) the power to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
   (d) if the authorised officer entered the premises by consent—to ask any person in or on the premises:
      (i) to answer any questions put by the authorised officer; and
Part 2  The Automotive Transformation Scheme
Division 3  Monitoring powers

Section 12

(ii) to produce any book, record or document requested by the authorised officer;
(e) if the authorised officer was authorised to enter the premises by a monitoring warrant—to require any person in or on the premises:
   (i) to answer any questions put by the authorised officer; and
   (ii) to produce any book, record or document requested by the authorised officer;
(f) the power to inspect any book, record or document on the premises;
(g) the power to take extracts from or make copies of any such book, record or document;
(h) the power to take onto premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;
(i) the power to operate electronic equipment, and do other things, at the premises as mentioned in section 20;
(j) the powers set out in subsections (2), (3) and (4).

Note: Failure to comply with paragraph (1)(e) is an offence—see section 24.

(2) The monitoring powers include the power to secure a thing for no more than 24 hours if:
   (a) the thing is found during the exercise of monitoring powers on the premises; and
   (b) an authorised officer believes on reasonable grounds that:
      (i) the thing affords evidence of the commission of an offence against the Automotive Transformation Scheme, or evidence of the commission of an offence against the Crimes Act 1914 or the Criminal Code that relates to the Scheme; and
      (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost, destroyed or tampered with before a warrant to seize the thing is obtained.

(3) The monitoring powers include the power to operate equipment at the premises to see whether:
   (a) the equipment; or
(b) a data storage device that:
   (i) is at the premises; and
   (ii) can be used with the equipment or is associated with it;
contains information that is relevant to:
   (c) determining whether there has been compliance with the
       Automotive Transformation Scheme; or
   (d) assessing the correctness of information provided under the
       Scheme.

(4) The monitoring powers include the following powers in relation to
information described in subsection (3) found in the exercise of the
power under that subsection:
   (a) the power to operate facilities at the premises to put the
       information in documentary form and copy the documents so
       produced;
   (b) the power to operate facilities at the premises to transfer the
       information to a disk, tape or other storage device that:
       (i) is brought to the premises for the exercise of the power;
       or
       (ii) is at the premises and the use of which for the purpose
           has been agreed in writing by the occupier of the
           premises;
   (c) the power to remove from the premises a disk, tape or other
       storage device to which the information has been transferred
       in exercise of the power under paragraph (b).

Subdivision B—Obtaining consent

13 Consent

(1) Before obtaining the consent of an occupier of premises, the
authorised officer must inform the occupier that he or she may
refuse consent.

(2) An entry of an authorised officer because of an occupier’s consent
is not lawful unless the occupier voluntarily consented to the entry.
(3) An occupier’s consent may be expressed to be limited to entry during a particular period unless the consent is withdrawn before the end of that period.

(4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.

(5) If an authorised officer is on the premises with the consent of the occupier, the authorised officer must:
   (a) show his or her identity card to the occupier, if required by the occupier; and
   (b) leave the premises if the occupier asks the authorised officer to do so.

Subdivision C—Monitoring warrants

14 Application for a monitoring warrant

(1) An authorised officer may apply to a magistrate for a monitoring warrant if the authorised officer wishes to find out whether the Automotive Transformation Scheme has been complied with.

(2) An authorised officer must give the magistrate information on oath or by affirmation to support the grounds for an application under subsection (1).

15 When a monitoring warrant may be issued

(1) If:
   (a) an authorised officer applies to a magistrate under subsection 14(1); and
   (b) the magistrate is satisfied, on the information given under subsection 14(2), that it is reasonably necessary that one or more authorised officers should have access to premises for the purposes of finding out whether the Automotive Transformation Scheme has been complied with;

the magistrate may issue a monitoring warrant authorising one or more authorised officers to search the premises.
(2) However, a magistrate must not issue a warrant under this section unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

16 Content of warrant

If a magistrate issues a warrant, the magistrate is to state in the warrant:

(a) a description of the premises to which the warrant relates; and

(b) that the warrant authorises one or more authorised officers (whether or not named in the warrant):
   (i) to enter the premises; and
   (ii) to exercise the powers set out in section 12; and

(c) whether the warrant may be executed at any time or only during particular hours; and

(d) the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect.

Subdivision D—Obligations and incidental powers of authorised officers

17 Authorised officer must produce identity card on request

An authorised officer is not entitled to exercise any powers under this Division in relation to premises if:

(a) the occupier of the premises requires the authorised officer to produce his or her identity card for inspection by the occupier; and

(b) the authorised officer fails to comply with the requirement.

18 Announcement before entry

An authorised officer executing a monitoring warrant must, before entering premises under the warrant:
Section 19

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

19 Copy of warrant to be shown to occupier etc.

(1) If the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the authorised officer executing the monitoring warrant or an assisting officer must make a copy of the warrant available to the person.

(2) The authorised officer must identify himself or herself to the person at the premises.

(3) The copy of the monitoring warrant need not include the signature of the magistrate who issued it.

20 Use of electronic equipment in exercising monitoring powers

(1) An authorised officer or an assisting officer may operate electronic equipment already at the premises in order to exercise monitoring powers if he or she believes, on reasonable grounds, that the operation of the equipment can be carried out without damage to the equipment.

(2) If the authorised officer or an assisting officer believes, on reasonable grounds, that:
   (a) there is on the premises material relating to information provided under the Automotive Transformation Scheme that may be accessible by operating electronic equipment on the premises; and
   (b) expert assistance is required to operate the equipment; and
   (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;
   he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard, or otherwise.
(3) The authorised officer or an assisting officer must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

(4) The equipment may be secured:
   (a) for a period not exceeding 24 hours; or
   (b) until the equipment has been operated by the expert; whichever happens first.

(5) If an authorised officer or an assisting officer believes, on reasonable grounds, that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of the period.

(6) The authorised officer or an assisting officer must give notice to the occupier of the premises of his or her intention to apply for an extension. The occupier is entitled to be heard in relation to that application.

(7) The provisions of this Division relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.

21 Compensation for damage to electronic equipment

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

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable under subsection (3), regard is to be had to whether the occupier of the premises, or the occupier’s employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

Subdivision E—Occupier’s rights and responsibilities

22 Occupier entitled to be present during execution of monitoring warrant

(1) If:

(a) a monitoring warrant is being executed; and
(b) the occupier of the premises to which the warrant relates, or another person who apparently represents the occupier, is present at the premises;

the person is entitled to observe the execution of the warrant.

(2) The right to observe the execution of the warrant ceases if the person impedes that execution.

(3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.
23 Occupier to provide authorised officer with facilities and assistance

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

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

Subdivision F—Offences

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

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

Penalty: 6 months imprisonment.

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

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

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

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

A person commits an offence if:

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

Penalty: 30 penalty units.
Subdivision G—Miscellaneous

26 Magistrates—personal capacity

Functions conferred personally

(1) The functions conferred on a magistrate by sections 15 and 16 are conferred on the magistrate:
   (a) in a personal capacity; and
   (b) not as a court or a member of a court.

Functions need not be accepted

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

Protection and immunity

(3) A magistrate performing a function conferred by sections 15 and 16 has the same protection and immunity as if he or she were performing the function:
   (a) as the court of which the magistrate is a member; or
   (b) as a member of the court of which the magistrate is a member.
Part 3—Miscellaneous

27 Transitional arrangements

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

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

27A Annual report

The Secretary must include the following in the Department’s annual report for a financial year:

(a) the total amounts of capped assistance and uncapped assistance paid to ATS participants under the Automotive Transformation Scheme during the 12 month period ending on 31 March in the financial year;

(b) details of the progress of the Australian automotive industry towards achieving economic sustainability, environmental outcomes and workforce skills development.

28 Delegation

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

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

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

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

Section 29

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

29  Regulations

The Governor General may make regulations prescribing matters:
(a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[Minister’s second reading speech made in—
House of Representatives on 24 June 2009
Senate on 7 September 2009]