EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 329

AUTOMOTIVE TRANSFORMATION SCHEME AMENDMENT REGULATIONS 2010 (NO. 1)

Background

The Automotive Transformation Scheme Regulations 2010 (the Regulations) are made under the authority of the Automotive Transformation Scheme Act 2009 (the Act). The Act established the legislative framework for the Automotive Transformation Scheme (ATS) with the administrative detail set out in the Regulations and the ATS Ministerial Order, a legislative instrument made under the authority of the Regulations.

The Automotive Transformation Scheme Amendment Regulations 2010 (No. 1) (the Amendment) provides additional clarification on administrative issues that were identified through the development of the administrative framework for the ATS. The need for some amendments was also identified by the Senate Standing Committee on Regulations and Ordinances.

The Amendment:
1. recognises plant and equipment acquired through hire purchase agreements by way of changes to regulations 1.5, 1.17, 1.18, 1.19 and 1.26;
2. confirms that goods produced and services provided in Australia, referred to in the definition of sales value in regulation 1.5, have the same meaning as in regulation 1.6;
3. makes it clear that automotive services provided in Australia can be in respect of production in Australia or overseas;
4. confirms that to be considered allowable research and development activity the conditions of both paragraph 1.20 (1) (a) and 1.20 (1) (b) must be met;
5. clarifies that a motor vehicle producer (MVP) cannot claim research and development that is directed at any production or provision of automotive services for the MVP’s own use through changes to subregulation 1.20 (6);
6. makes it clear that allowable research and development can be treated as both an expense or a capital investment by way of changes to regulations 1.21 and 1.22;
7. clarifies paragraph 1.29 (2) (c) to make it clear that the Secretary may only decide that an ATS participant should have its production value, sales value or investment value assessed as not being at arms length if the participant has been found guilty of being involved in a cartel or other price-fixing arrangement by a relevant jurisdiction and in accordance with the requirements of the Trade Practices Act 1974;
8. includes provisions where in not granting registration in the national interest or continued registration in the national interest, the Minister is required to write to applicants outlining the reasons for these decisions through changes to regulation 2.8 and 2.25;
9. corrects the spelling error in regulation 2.28, changing ‘affect’ to ‘effect’;
10. clarifies the ability for ATS participants to correct any sales value achieved and start-up investment amount spent for the ATS year and the previous ATS year in...
any of their quarterly returns for the purpose of determining the sales-based cap under regulation 3.11;

11. provides transitional arrangements in an ATS year for ATS participants completing their eligible start-up investment periods through changes to regulation 3.11;

12. clarifies that a request by an ATS participant to offset a scheme debt from one or more quarterly payments of assistance under regulation 4.2 must be agreed to by the Secretary. Any such decision is reviewable under paragraph 5.6 (fa); and

13. makes it clear that where agreement has been made for scheme debts to be deducted from future payment, the debit is not considered overdue.

**Consultation**

The Amendment has been developed through extensive consultation with Government and with key stakeholders. Industry was consulted at ATS information sessions in Melbourne (25 October 2010), Adelaide (26 October 2010), Sydney (27 October 2010) and Brisbane (28 October 2010).

Feedback from industry indicates that it is supportive of the proposed administrative changes as they will ensure the ATS delivers its policy objective in an effective manner as well as providing efficient assistance to the industry.

**Financial Implications**

There are no additional financial implications with regard to the Amendment and the total administered expenses for the ATS remains at an estimated at $3,347 million over the period 2010–11 to 2020–21.

**Legislative Authority**

The legislative basis for variations of the *Automotive Transformation Scheme Regulations 2010* is section 29 of the *Automotive Transformation Scheme Act 2009*. 
Notes on Sections to be Amended

This Explanatory Statement uses the following abbreviations:

- ‘ATS’ means the Automotive Transformation Scheme
- ‘MVP’ means a person registered as a motor vehicle producer under the ATS

Regulation 1 Name of Regulations

The title of the Regulations is the Automotive Transformation Scheme Amendment Regulations 2010 (No. 1).

Regulation 2 Commencement

Regulation 2 prescribes that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments. Registration is governed by the Legislative Instruments Act 2003.

Regulation 3 Amendment of Automotive Transformation Scheme Regulations 2010

This regulation provides for the amendments of the Automotive Transformation Scheme Regulations 2010 as outlined in Schedule 1.

Schedule 1 Amendments

Item [1] – Subregulation 1.5 (1), definition of acquire

This item amends the definition of acquire to include a reference to hire purchase agreements. Industry consultations identified that it is normal commercial practice to fund the acquisition of plant and equipment by a variety of financial instruments, including hire purchase agreements. This inclusion recognises allowable plant and equipment acquired via hire purchase agreements.

Item [2] – Subregulation 1.5 (1), after definition of GST

This item inserts a definition of hire purchase agreement into subregulation 1.5 (1), giving it the same meaning as in the Australian Accounting Standards.

Item [3] – Subregulation 1.5 (1), after definition of sales value

This item inserts a note at the bottom of the definition of sales value in subregulation 1.5 (1), making it clear that the definition of production of goods and provision of services is that set out in regulation 1.6.

Item [4] – Paragraphs 1.9 (3) (f) and (g)

This item substitutes paragraphs 1.9 (3) (f) and (g) and recognises that automotive services provided in Australia can be in respect of production in Australia or overseas. This inclusion recognises that automotive services provided in respect of overseas
production supports the objective of the *Automotive Transformation Scheme Act 2009*, as long as the services are provided in Australia.

**Item [5] – Paragraph 1.17 (3) (g)**

This item amends paragraph 1.17 (3) (g) as a consequence of the inclusion of hire purchase agreements and ensures that plant and equipment acquired by such an agreement is treated in the same way to finance leases in determining allowable plant and equipment investment. This allows plant and equipment acquired under a hire purchase agreement to be recognised as eligible investment under the ATS.

**Item [6] – Subparagraph 1.17 (4) (c) (iii)**

This item amends the punctuation at the end of subparagraph 1.17 (4) (c) (iii) to allow new paragraph 1.17 (4) (d) to be inserted by item 7 below.

**Item [7] – After paragraph 1.17 (4) (c)**

This item inserts a new paragraph 1.17 (4) (d) and is a consequence of the inclusion of hire purchase agreements. This item sets out where plant and equipment is not taken to have previously been owned and used in Australia if the way of acquiring the plant and equipment was under a hire purchase agreement. This allows plant and equipment acquired under a hire purchase agreement to be considered to have previously been owned and used in Australia.

**Item [8] – Subregulation 1.18 (3)**

This item substitutes subregulation 1.18 (3) as a consequence of the inclusion of hire purchase agreements. The item sets out that in determining the maximum claimable value for allowable plant and equipment for MVPs, plant and equipment acquired under a hire purchase agreement is treated in the same manner as plant and equipment acquired under a finance lease. This allows plant and equipment acquired by an MVP under a hire purchase agreement to be claimed as allowable plant and equipment.


This item substitutes subregulation 1.19 (3) and is a consequence of the inclusion of hire purchase agreements. The item sets out that in determining the maximum claimable value for allowable plant and equipment acquired by ATS participants that are not MVPs, plant and equipment acquired by means of a hire purchase agreement is treated in a similar way to plant and equipment acquired under a finance lease. This allows plant and equipment acquired under a hire purchase agreement, by an ATS participant that is not MVP, to be claimed as allowable plant and equipment.

**Item [10] – Subregulation 1.20 (1)**

This item substitutes subregulation 1.20 (1) and makes it clear that to be considered allowable research and development activity, the conditions of both paragraphs 1.20 (1) (a) and 1.20 (1) (b) must be met. This would clarify that allowable research and
development must support the objective of the *Automotive Transformation Scheme Act 2009*.


This item substitutes subregulation 1.20 (6) to clarify that an MVP may not claim research and development that is directed at any production or provision of automotive services for the MVP’s own use. MVPs receive assistance for eligible research and development for their own use via capped and uncapped production assistance, which recognises the lumpy nature of research and development in developing new models.

**Item [12] – Subregulation 1.21 (2), definition of F**

This item amends the definition of F in subregulation 1.21 (2) so that in determining the maximum claimable value for allowable research and development, MVPs can treat research and development (not for own use) as an expense or a capital investment, so long as it has been recognised in the MVP’s accounts in accordance with the Australian Accounting Standards. The Australian Accounting Standards recognise that investment in research and development can be either an expenditure item or a capital item. This change more closely aligns the recording of expenditure for the purpose of the ATS with the Standards.

**Item [13] – Subregulation 1.21 (6), 1.22 (2) and 1.22 (6)**

This item amends subregulations 1.21 (6), 1.22 (2) and 1.22 (6) and sets out that in determining the maximum claimable value for allowable research and development, ATS participants can treat research and development as an expense or a capital investment, so long as it has been recognised in the participant’s accounts in accordance with the Australian Accounting Standards. The Australian Accounting Standards recognise that investment in research and development can be either an expenditure item or a capital item. This item more closely aligns the recording of expenditure for the purpose of the ATS with the Standards.

**Item [14] – Paragraph 1.26 (1) (a)**

This item amends paragraph 1.26 (1) (a) as a consequence of the inclusion of hire purchase agreements. The item sets out that investment in plant and equipment by way of a hire purchase agreement is treated as the same way as investment by a finance lease in determining whether investment is to have occurred. This allows plant and equipment acquired under a hire purchase agreement to be recognised as eligible investment under the ATS.

**Item [15] – Paragraph 1.29 (2) (c)**

This item substitutes paragraph 1.29 (2) (c) and makes it clear that the Secretary of the Department of Innovation, Industry, Science and Research may only decide that an ATS participant should have its production value, sales value or investment value assessed as not being at arms length if the participant has been found guilty of being involved in a cartel or other price-fixing arrangement by a relevant jurisdiction and in
accordance with the requirements of the *Trade Practices Act 1974*. This removes any uncertainty in understanding the Secretary’s role in these matters.

**Item [16] – After subregulation 2.8 (6)**

This item inserts a new subregulation 2.8 (6A) after subregulation 2.8 (6) to provide that where the Minister for Innovation, Industry, Science and Research decides to not agree to a request for registration in the national interest, he/she must write to the applicant outlining the reasons for this decision. This item provides increased transparency in respect of the Minister’s decision making.

**Item [17] – After subregulation 2.25 (6)**

This item inserts a new subregulation 2.25 (6A) after subregulation 2.25 (6) to provide that where the Minister decides to not agree to a request for continued registration in the national interest, he/she must write to the applicant outlining the reasons for this decision. This item provides increased transparency in respect of the Minister’s decision making.

**Item [18] – Subregulation 2.28 (3)**

This item amends subregulation 2.28 (3) to correct a spelling error by changing ‘affect’ to ‘effect’.

**Item [19] – Regulation 3.7**

This item substitutes regulation 3.7 and provides that an ATS participant can correct its MVP production achieved, eligible investment undertaken, sales value achieved and eligible start-up amount spent that it failed to cover in an earlier return for a quarter in the same ATS year. This provides that sales value achieved and eligible start-up amount spent can be corrected in the same way that MVP production achieved and eligible investment undertaken can be corrected. This also permits an ATS participant to make this correction in the final quarter within an ATS year. This item provides the participants with the ability to correct inadvertent errors for the current ATS year.

**Item [20] – After subregulation 3.11 (2)**

This item inserts new subregulations 3.11 (3) and 3.11 (4) after subregulation 3.11 (2) and provides transitional arrangements for ATS participants completing their eligible start-up investment periods in an ATS year.

New subregulation 3.11 (3) provides additional clarity for when an eligible start-up period ends and provides that the applicable sales based cap for the quarters in the ATS year remaining after the quarter in which the eligible start-up period ends would be the previous four ATS quarters as opposed to the previous ATS year. Without this new subregulation, the sales value achieved by an ATS participant in a previous ATS year could be in respect of a period much less than 12 months. New subregulation 3.11 (3) provides that the sales based cap is closer to a 12 month period of sales for these participants.
New subregulation 3.11 (4) provides that an ATS participant can correct its sales value achieved and eligible start-up amount spent for a return for the previous ATS year. The amount of sales value achieved and eligible start-up amount spent in a previous ATS year can have a large impact on an ATS participant’s entitlement to assistance in its current ATS year. This subregulation provides the participants with the opportunity to ensure the most accurate sales value achieved and start-up investment amounts are used.

**Item [21] – Regulation 4.2**

This item makes a formatting change to regulation 4.2 to allow new subregulation 4.2 (2) to be inserted by item 22 below.

**Item [22] – Regulation 4.2**

This item inserts a new subregulation 4.2 (2) to make it clear that recovery of scheme debts, and applicable interest in respect of debts related to uncapped assistance, by way of offset from one or more quarterly payments of assistance is subject to agreement by the Secretary and provides that the Secretary may refuse if he/she believes the ATS participant has insufficient remaining entitlement to assistance to recover the debt.

**Item [23] – Subparagraph 4.3 (1) (c) (ii)**

This item makes a punctuation change at the end of subparagraph 4.3 (1) (c) (ii) to allow new paragraph 4.3 (1) (d) to be inserted by item 24 below.

**Item [24] – After paragraph 4.3 (1) (c)**

This item inserts a new paragraph 4.3 (1) (d) to provide that when an ATS participant requests to repay a scheme debt, and applicable interest in respect of debts related to uncapped assistance, by way of deduction from future quarterly payments, it should make this request within 30 days of receiving the Secretary’s notice in setting out the details of its scheme debt. This item provides that ATS participants who wish to offset their scheme debts from one or more quarterly payments of assistance must make that request before the debt would be considered overdue.


This item substitutes subregulation 4.4 (2) with new subregulations 4.4 (2), 4.4 (2A) and 4.4 (2B) as a consequence of new subregulation 4.2 (2). Subregulations 4.4 (2) and 4.4 (2A) sets out beyond doubt which rate of interest that is payable if a scheme debt is considered overdue or not considered overdue and also sets how this period is determined. The inclusion of subregulation 4.4 (2B) makes it clear that the meaning of payable day is in respect of when a debt or interest is due.
Item [26] – Subregulation 4.5 (1)

This item amends a reference in subregulation 4.5 (1) as a consequence of new subregulation 4.2 (2) which makes it clear that the Secretary has discretion in agreeing to a request to repay a scheme debt, and applicable interest in respect of debts related to uncapped assistance, by way of deduction from future quarterly payments.

Item [27] – After paragraph 5.6 (f)

This item inserts a new paragraph 5.6 (fa) after paragraph 5.6 (f) to provide that a decision to refuse a request from an ATS participant to offset a scheme debt from one or more quarterly payments of assistance is reviewable by the Secretary and the Administrative Appeals Tribunal. This ensures that the decision is given the same amount of scrutiny as similar decisions under regulation 5.6.