

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

AUTOMOTIVE INDUSTRY AUTHORITY AMENDMENT ACT 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for  
Industry, Technology and Commerce, Senator  
the Honourable John N. Button)



## OUTLINE

This Bill proposes to amend the Automotive Industry Authority Act 1984, to implement an integral part of the Government's Motor Vehicle Industry Policy; ie the provision of financial assistance to projects for the development of motor vehicles and components of Australian design.

The proposed amendments introduce a new part into the Principal Act, to establish the administrative procedure for the Motor Vehicles and Components Development Grants Scheme, the details of which were formally announced by the Government on 18 October 1984.

The central features of the proposed Scheme, to be administered by the Automotive Industry Authority and contained in this Bill, are as follows:

- (i) new definitions for "eligible company", "eligible product" and "automotive development project", which set the eligibility criteria for participation in the scheme, and describe the types of products and the kinds of research, development and design activities relating to those products which will be eligible for financial assistance (Clause 5);
- (ii) the selection of projects for assistance under the scheme, the amount of that assistance, and its duration to be within the discretion of the Authority, subject to the Bill, any regulations, and any specific guideline directions from the Minister with respect to the policies and practices to be followed by the Authority in the performance of its functions, and the exercise of its powers in relation to the Scheme (Clause 8 - proposed Sections 26D and 26M);
- (iii) grant payments to be made on the basis of a formal agreement between the Authority, on behalf of the Commonwealth, and the grant recipient, following the submission of a written application by the intending grant recipient (Clause 8 - proposed Sections 26D and 26F).
- (iv) the total amount of grants payable or available for commitment during each year of the scheme restricted to that amount which the Government notifies to the Authority is available for payment or commitment in that year (Clause 8 - proposed Section 26E);
- (v) provision for grant agreements to limit grants to a maximum rate of 50% of eligible expenditure and 5 years duration, unless the Minister otherwise approves (Clause 8 - proposed Section 26H);

- (vi) grants to be paid progressively over the life of the project as eligible expenditure is incurred, with provision for advance payments to be made subject to the condition that the grant recipient offer adequate security for the repayment of any moneys subsequently unacquitted (Clause 8 - proposed Section 26L);
- (vii) penalties for the submission to the Authority, in, or in connection with, an application for a grant, of information which is false or misleading in a material particular (Clause 8 - proposed Section 26N);
- (viii) a provision to allow the recovery of grant moneys on conviction of an offence for the submission of false or misleading information, or where there has been an overpayment generally on the basis of false or misleading information (Clause 8 - proposed Sections 26P and 26Q);
- (ix) a provision which allows the Minister to authorize the Authority to arrange for the carrying out of public interest projects on behalf of the Commonwealth (Clause 9); and
- (x) a provision to ensure that information supplied in confidence to the Authority in relation to the Scheme is properly safeguarded, with an exception to permit the reciprocal exchange of information between the Authority and the Industrial Research and Development Incentives Board (Clause 11).

#### Financial Impact Statement

Clause 8 of this Bill includes a provision to restrict the total amount of grants payable or available for commitment during each year of the scheme to that amount which the Government notifies to the Authority is available for payment or commitment in that year. The Government has decided that the Motor Vehicles and Components Development Grants Scheme will be subject to a maximum appropriation of \$150 million over the 5 years to 1988-89. No funds were allocated for the Scheme in the 1984-85 Budget, however, the Government has approved the commitment of up to \$20 million for grant agreements entered into during the 1984-85 financial year, with appropriation for the committed funds to be sought in the 1985-86 Budget process.

## NOTES ON CLAUSES

### Short Title

Clause 1 is a formal machinery clause.

### Commencement

Clause 2 provides for the Act to come into operation on the day on which it receives the Royal Assent.

### Principal Act

Clause 3 is a technical drafting clause, which formally defines the Automotive Industry Authority Act 1984 as the Principal Act for the purposes of this legislation.

### Long Title

Clause 4 is a technical drafting clause, which amends the title of the Principal Act to reflect the new function of the Automotive Industry Authority to promote the development of motor vehicles, and motor vehicle components, of Australian design.

### Interpretation

Clause 5 amends Section 4 of the Principal Act by:

- . adding a definition for "Australian company" which is consequent upon the new definition of "eligible company";
- . adding a definition for "automotive development project", which describes the types of research, development and design activities relating to eligible products, which can be assisted under the Scheme;
  - design is defined to include,
    - .. the re-design of eligible products using technology already available or being utilised on other products of the company,
    - .. design work that arises from the need to meet the special requirements of a customer, or
    - .. design work that is primarily directed to style, as distinct from the functional characteristics of a product (proposed paragraph b);

- design of tooling can be assisted, where such "tooling" (see proposed definition at page 3) is to be used principally in the commercial production of a new or substantially improved eligible product (proposed paragraph C);
- the development of computer software programmes which are intended to enhance an eligible company's general capability to undertake the defined research, development and design activities is also included (proposed paragraph d);

adding definitions for "cutting", "forming" and "metal" which are consequent upon the new definition of "prescribed machine tool";

adding a definition for "eligible company", which prescribes those kinds of bodies corporate to which grant payments may be made. Such companies must be incorporated in Australia, and must be engaged in or able to demonstrate an intention to become engaged in the manufacture in Australia of eligible products (see also proposed new Section 26B in Clause 8 of the Bill);

adding a definition for "eligible products", to limit the grants scheme to automotive development projects relating to motor vehicles of a certain class or classes (see proposed new Section 26A in Clause 8 of the Bill), or components for such vehicles;

adding definitions for "grant", "grant agreement", "guidelines directions", and "year" which are of a technical drafting nature only;

adding a definition for "grant year", which is restricted to any one of the five financial years from 1984-85 to 1988-89;

adding a definition for "new", which is relevant to the definition of "automotive development project". For the purposes of this legislation the term is defined in terms of the Australian automotive industry and means not previously produced by the automotive industry;

- . adding a definition for "prescribed machine tool", which is consequent upon the definition for tooling;
- . adding a definition for "tooling", which is one of the eligible types of automotive development project. For the purposes of this legislation, the term means a tool, jig, or die, but not a prescribed machine tool;
- . adding a new sub-section 3, which deems projects to be carried out by an eligible company, where the company arranges for another company to perform the particular project, or part thereof.

#### Objects

Clause 6 amends Section 6 of the Principal Act, to include as one of the objects of the Automotive Industry Authority, the provision of financial assistance to encourage the Australian automotive industry to develop motor vehicles and components for such vehicles, of local design (proposed new paragraph 6(d)).

#### Functions

Clause 7 amends Section 7 of the Principal Act by inserting two new paragraphs relating to the new functions of the Authority;

- . new paragraph 7(ea), regarding the administration of the Motor Vehicles and Components Development Grants Scheme, and
- . new paragraph 7(eb), regarding arrangements for the carrying out of public interest projects.

#### PART IVA - Motor Vehicles and Components Development Grants Scheme

Clause 8 introduces a new Part into the Principal Act, comprising 17 sections, which establishes the administrative basis for the new Scheme. The new Part provides as follows:

Eligible ProductsNew Section 26A

- . This section follows from the definition of "eligible product", and prescribes the means whereby certain classes of motor vehicles are to be declared eligible for financial assistance under the Scheme. The kinds of vehicles intended to be covered by the Scheme, are to be notified in writing and published in the Gazette.

Eligible CompanyNew Section 26B

- . This section follows from the definition of "eligible company", and provides the means whereby newly established companies, or existing companies, which are moving into the manufacture of motor vehicles or components for such vehicles, can be declared to be eligible for the purposes of applying for financial assistance under the Scheme.

ExpenditureNew Section 26C

- . This section limits the expenditure on which the rate and amount of a grant payment is based, to only that expenditure which an eligible company has or will incur in respect of the specific automotive development project, and;
  - is incurred in Australia,
  - is, in the opinion of the Authority, necessary for carrying out the project, and
  - is, in the opinion of the Authority, reasonable for carrying out the project.



Agreements with respect to projects

New Section 26D

This section provides the mechanism for the provision of grant moneys to eligible companies. It empowers the Authority to make grant payments on the basis of a formal agreement between the Authority, on behalf of the Commonwealth, and the grant recipient, following the submission of a written application by the intending grant recipient pursuant to new section 26F,

- the selection of projects for assistance under the Scheme, and the grant agreements which may be entered into as a result of that selection, is within the discretion of the Authority, subject however, to the Act, to any regulations which might be made under the Act, and to any guideline directions from the Minister under new section 26M;
- agreements cannot be entered into in relation to projects that are to be commenced after the 5 year time limit on the scheme; i.e. after 30 June 1989 (proposed sub-section 26D(2)).

Total Amounts allocated and committed under this Part in respect of a year

New Section 26E

This section imposes an obligation on the Minister to notify the senior member of the Authority, as soon as practicable after the commencement of this Act, and thereafter as soon as practicable after each 1 July;

- of the total funds available for commitment and expenditure on grants in that year (proposed sub-section 26E(1) and (2)),
- the Minister may, at any time during the relevant year, notify the Authority of additional amounts which it might allocate or commit during that year (proposed sub-section 26E(3)),
- the Authority is obliged to ensure that in entering into grant agreements during a particular year, the total amounts of grants payable, or the total amount of commitments incurred, does not exceed the amount which the Minister has notified is available (proposed sub-section 26E(4)).

## Applications

### New Section 26F

. This section details the general requirements relating to applications for grants under the Scheme. These are;

- the Authority shall not authorize a grant to a company unless the company desiring to obtain a grant has made an application in writing to the Authority (proposed sub-section 26F(1)),
- an application shall be made in accordance with such form as is prescribed or, if no form is prescribed, such form as the Authority approves (proposed sub-section 26F(2)), and
- the Authority may refuse to consider an application unless the applicant furnishes such further information, or makes available to the Authority such books or records, as the Authority specifies, being information, books or records that the Authority requires for the performance of its functions in relation to the administration of the Scheme (proposed sub-section 26F(4)).

### Results of Projects to be exploited

#### New Section 26G

. This section constrains the Authority to only enter into grant agreements if it is satisfied that the results of the project will be exploited, by either the grant recipient or another eligible company, on normal commercial terms and otherwise in a manner that will be for the benefit of the Australian economy.

### Provisions of grant agreements

#### New Section 26H

. This section prescribes some mandatory inclusions and limitations for grant agreements, as follows;

- the agreement shall specify the year, or years, in which the grant is to be payable, and the amount of the grant in that year or in each of those years (proposed sub-section 26H(1)),

- the agreement shall not provide for the payment of grants after the Principal Act ceases to have effect, ie 31 December 1992 (proposed sub-section 26H(2)),
- there is to be a maximum number of 5 years for which the Authority can assist a particular project and the maximum rate of grant is limited to 50% of eligible expenditure, unless the Minister extends the period or approves an increased percentage in relation to that agreement (proposed sub-section 26H(3) and (4)),
- the agreement shall include provisions which require the grant recipient
  - .. to keep such accounts, books, documents and other records as correctly record and explain particulars of all expenditure incurred on the project, and the application of all grant moneys to the project,
  - .. to submit to the Authority, at regular intervals, audited accounts of the above by approved qualified accountants,
  - .. to permit members of the Authority, (or such persons appointed by the senior member of the Authority) at all reasonable times, to inspect, copy, or take extract of the above-mentioned records, and
  - .. to keep the Authority informed of the progress of the project to which the agreement relates (proposed sub-section 26H(5))
- the Authority may, in addition to any specific requirements set by the Act, regulations made under the Act, or guideline directions (see new section 26(M)), but subject to those requirements, include in the agreement such further provisions which it considers necessary. These further provisions need not be restricted to the imposition of conditions or requirements dealing with the particular project concerned. They may also relate to the imposition of conditions or requirements on other matters, which, for example, promote the attainment of the stated industry objectives in the guideline directions (proposed sub-section 26H(7)).

- the Authority may include in its grant agreements a provision for the repayment of grant moneys on breach by the grant recipient of the agreement, or such other circumstances specified in the agreement (proposed 26H(8)),
- the validity of grant agreements is specifically preserved in spite of a failure by the Authority to comply with a provision of the Act or observe the limits of its powers under the Act. This is to guard, amongst other things, against the possibility of a technical breach of the Act being used as a ground for terminating an entire agreement (proposed 26H(9)).

#### Adjustment of grant by reason of financial assistance

##### New Section 26J

This section empowers the Authority to reduce the amount of any grant to a company in respect of a project where;

- other Government financial assistance has been received (Commonwealth or State) and
- that assistance has, in the opinion of the Authority, aided the company to carry out the specific project.

#### Abuse of Act

##### New Section 26K

This section empowers the Authority to take certain action relating to the amount of a grant, where it is of the opinion that an act or thing has been done with a view to obtaining a grant or affecting the amount of a grant in a way which constitutes an attempt to abuse the Act;

- the Authority may disregard any expenditure in, or in relation to, the doing of the act or thing, or
- the Authority may make such adjustment to an amount of expenditure incurred in respect of the project, as it thinks necessary to prevent, or cancel, or reduce the effects of, the abuse.

Advances in respect of grantsNew Section 26L

This section authorises the payment of grants in advance, to assist, amongst other things, eligible companies with limited financial resources in the initial stages of a project. Advances are subject to the condition that the grant recipient offer adequate security for the repayment of the advance, or part thereof, which might subsequently be unacquitted;

- amounts unacquitted are recoverable by the Commonwealth as a debt due to the Commonwealth in a court of competent jurisdiction (proposed sub-section 26L(4)).

Guidelines for policies and practices of AuthorityNew Section 26M

This section provides the legislative basis for the provision of policy directives from the Government to the Authority, which are to be followed by the Authority in the performance of its functions and the exercise of its powers under the Scheme. The directions can deal with general policy objectives for the entire automotive industry, as well as policy objectives for grant agreements and the provisions to be included in such agreements (proposed sub-section 26M(1));

- guideline directions are required to be published forthwith in the Gazette, and are not to be directed at or to a particular company. Rather they are to be general in nature (proposed sub-sections 26M(2) and (3)).

OffencesNew Section 26N

This section provides for pecuniary penalties or imprisonment for the submission to the Authority, in or in connection with an application for a grant, of information which is false or misleading in a material particular;

- the penalty level is \$2,000 or 12 months imprisonment where the offender is a natural person, or

- \$10,000 where the offender is a body corporate (proposed sub-section 26N(1))
- proposed sub-section 26N(2) imputes to a body corporate, the state of mind and conduct of a director, servant or agent of the body corporate who engages in conduct within the scope of the person's actual or apparent authority (proposed sub-section 26N(2)).

Recovery of grant on conviction

New Section 26P

- . This section allows a Court to order the repayment of any grant amount wrongfully obtained by a person convicted of an offence against the above section, and the order is enforceable as a final judgement in favour of the Commonwealth.

Recovery of overpayments to a person

New Section 26Q

- . This section permits the recovery by the Commonwealth of grant moneys paid to a company where such moneys were paid on the basis of false or misleading information, irrespective of whether or not such incorrect information was knowingly supplied by the company.

Transitional

New Section 26R

- . This section deems expenditure on projects for which a grant application was received by the Authority on or after 18 October 1984 (the date of the Government's announcement of the Scheme) to be eligible expenditure for the purposes of the Act, as long as a further written grant application is received by the Authority once the Amendment Act commences.

Money to be appropriated

New Section 26S

- . This a normal machinery provision.

Arrangements by Authority for carrying out industrial research on behalf of Commonwealth

Clause 9 introduces a new section 27A, similar to Section 39 of the Industrial Research and Development Incentives Act 1976, which empowers the Authority, subject to Ministerial directions, to make arrangements for the carrying out of public interest projects. This provides an avenue for the Commonwealth to achieve commercial application of the results of research and development undertaken in Government financed research institutions.

Annual Report

Clause 10 introduces a new sub-section (1A) to Section 29 of the Principal Act, which requires the Annual Report of the Authority to specify details of;

- automotive development projects, including the names of companies that the Authority has entered into agreements with, and the respective amounts of the grants provided;
- public interest projects, including the names of persons with whom the Authority has entered into agreements, and the progress of those projects;
- guideline directions given by the Minister.

Confidentiality

Clause 11 amends Section 29 of the Principal Act by

- amending sub-section (1) to permit the Authority to supply information to the Industrial Research and Development Incentives Board for the purposes of the Industrial Research and Development Incentives Act 1976;
- inserting a new sub-section (1A) to permit the Authority to supply information to the Minister, the Secretary to the Department, or an officer of the Department designated by the Secretary to the Department.

Part III Amendment of Industrial Research and Development Incentives Act 1976

Principal Act

Clause 12 is a technical drafting clause in which introduces a reference in this Part to the Industrial Research and Development Incentives Act 1976 as the Principal Act.

Secrecy

Clause 13 is consequential on the amendment introduced by Clause 11. This clause effects an amendment to Section 22 of the IR&DI Act to empower the Industrial Research and Development Incentives Board to supply information on industrial research and development to the Automotive Industry Authority.