

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented pursuant to leave granted and read 1^o, 17 April 1985)

(THE MINISTER FOR INDUSTRY, TECHNOLOGY AND COMMERCE,
SENATOR BUTTON)

A BILL

FOR

**An Act to amend the *Automotive Industry Authority Act 1984*
to promote the development of motor vehicles, and motor
vehicle components, of Australian design, and for related
purposes**

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Automotive Industry Authority
Amendment Act 1985*.

Commencement

2. This Act shall come into operation on the day on which it receives the
Royal Assent.

PART II—AMENDMENTS OF AUTOMOTIVE INDUSTRY AUTHORITY ACT 1984

Principal Act

3. The *Automotive Industry Authority Act 1984*¹ is in this Part referred to as the Principal Act.

5

Long title

4. The title of the Principal Act is amended by adding at the end “and to promote the development of motor vehicles, and motor vehicle components, of Australian design”.

Interpretation

10

5. Section 4 of the Principal Act is amended—

- (a) by inserting after the definition of “associate member” in sub-section (1) the following definition:

“ ‘Australian company’ means a body corporate that is incorporated in a State or in an internal Territory;”;

14

- (b) by inserting after the definition of “Authority” in sub-section (1) the following definition:

“ ‘automotive development project’, in relation to an eligible company, means—

- (a) a project for systematic experimentation or analysis in a field of science or technology carried on with the object of—

20

- (i) acquiring knowledge that may be of use for the purpose of devising or developing a new or substantially improved eligible product; or

2.

- (ii) applying knowledge for the purpose referred to in sub-paragraph (i);

- (b) a project for the design of a new or substantially improved eligible product, which may be a project consisting of—

3

- (i) the re-design of an eligible product using existing technology;

- (ii) design work that arises from the need to meet the requirements of a particular customer of the company; or

3

- (iii) design work that is primarily related to the style of an eligible product rather than to the functional characteristics of the product;

- (c) a project for the design of tooling for use principally in the commercial production of a new or substantially improved eligible product; or

4

- (d) a project for the development of a computer software program intended to enhance the general capability of the company to undertake a project referred to in paragraph (a), (b) or (c),

being a project the performance of which is directly related to the manufacture, or proposed manufacture, in Australia of an eligible product by the company;”;

- (c) by inserting after the definition of “body” in sub-section (1) the following definitions:

“‘cutting’, in relation to a metal work-piece, means removing metal from the work-piece by mechanical means, but does not include sand-blasting, grit-blasting, shot-blasting or ultrasonic machining;

‘eligible company’ means an Australian company—

- (a) that is engaged in the manufacture, in Australia, of eligible products; or
- (b) in respect of which a declaration under section 26B is in force;

‘eligible product’ means—

- (a) a motor vehicle included in a class of motor vehicles in respect of which a declaration under section 26A is in force; or
- (b) a component for a motor vehicle referred to in paragraph (a);

‘forming’, in relation to a metal work-piece, means changing the shape of the work-piece (without removing metal from the work-piece by means other than cutting and without melting any portion of the work-piece) by means of the application of pressure, with or without the application of heat, but does not include—

- (a) the moulding of metal powders;
- (b) the compression of scrap metal into bales or blocks;
- (c) roller-crushing;
- (d) roller-grinding; or
- (e) cable-making;

‘grant’ means a grant of financial assistance under a grant agreement;

‘grant agreement’ means an agreement entered into under section 26D;

‘grant year’ means the year that commenced on 1 July 1984 or any of the 4 next succeeding years;

‘guideline directions’ mean directions of the Minister under section 26M;”;

- (d) by inserting after the definition of “member” in sub-section (1) the following definitions:

“ ‘metal’ means metal in its solid state;

‘new’, in relation to an eligible product, means not previously produced by the automotive industry;

‘prescribed machine-tool’ means a power-driven machine tool (including such a tool that is ordinarily operated while wholly held in the hand) for the working of metal solely by means of cutting or forming, or solely by means of cutting and forming, and includes—

(a) a general-purpose press; and

(b) a rolling mill,

but does not include a machine the principal purpose of which is measuring or testing;”;

- (e) by inserting after the definition of “senior member” in sub-section (1) the following definitions:

“ ‘tooling’ means a tool, jig or die but does not include a prescribed machine-tool;

‘year’ means a period of 12 months commencing on 1 July.”; and

- (f) by adding at the end the following sub-section:

“(3) For the purposes of this Act, an eligible company shall be taken to carry out an automotive development project if the eligible company arranges for that project to be carried out.”.

Objects

6. Section 6 of the Principal Act is amended—

(a) by omitting from paragraph (b) “and”; and

(b) by adding at the end the following word and paragraph:

“; and (d) to provide financial assistance to encourage the development by the automotive industry of motor vehicles, and motor vehicle components, of Australian design.”.

Functions

7. Section 7 of the Principal Act is amended by inserting after paragraph (1) (e) the following paragraphs:

“(ea) to administer the scheme established by Part IVA;

(eb) to make arrangements under section 27A for the carrying out of projects;”.

8. After Part IV of the Principal Act the following Part is inserted:

**“PART IVA—MOTOR VEHICLES AND COMPONENTS
DEVELOPMENT GRANTS SCHEME**

Eligible products

5 “26A. The Minister may, by notice in writing published in the *Gazette*, declare a class of motor vehicles specified in the notice to be a class of eligible products for the purposes of this Act.

Eligible company

10 “26B. Where an Australian company satisfies the Authority that the company intends to engage in the manufacture of eligible products in Australia, the Authority may, by resolution, declare that company to be an eligible company for the purposes of this Act.

Expenditure

5 “26C. In ascertaining, for the purposes of this Part, the expenditure that has been, or will be, incurred by an eligible company in respect of an automotive development project, the following expenditure shall be disregarded:

- (a) expenditure that was, or will be, incurred outside Australia;
- 10 (b) expenditure that the company has failed to satisfy the Authority was, or will be, necessary in order to carry out the project;
- (c) expenditure that the company has failed to satisfy the Authority it was, or will be, reasonable to incur in carrying out the project.

Agreements with respect to projects

“26D. (1) Where—

- 5 (a) an eligible company is carrying out, or proposes to carry out, an automotive development project in Australia; and
- (b) the company applies under section 26F for a grant under this Part in respect of the project,

0 the Authority may, subject to this Act, to any regulations under this Act and to any guideline directions, enter into an agreement, on behalf of the Commonwealth, with the company for and in relation to the making of a grant of financial assistance under this Part to the company in respect of expenditure incurred, or to be incurred, by the company in respect of the project on or after the day on which the company applied for the grant.

3 “(2) Sub-section (1) does not apply in relation to an automotive development project that is to be commenced after 30 June 1989.

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

“26E. (1) The Minister shall, as soon as practicable after the commencement of this Act, by notice in writing to the senior member—

- (a) specify the total amount allocated for grants during the year that commenced on 1 July 1984; and 5
- (b) specify the total amount of the commitments the Authority may incur during the year.

“(2) The Minister shall, as soon as practicable after each 1 July after the commencement of this Act, by notice in writing to the senior member—

- (a) specify the total amount allocated for grants during the year commencing on that date; and 10
- (b) if the year is a grant year, specify the total amount of the commitments the Authority may incur during the year.

“(3) The Minister may, during any year commencing on 1 July, by notice in writing to the senior member— 15

- (a) specify an amount as an additional amount allocated for grants during the year; and
- (b) if the year is a grant year, specify an amount as an additional amount of commitments the Authority may incur during the year.

“(4) In entering into grant agreements, the Authority shall ensure that— 20

- (a) the total amount of grants payable during a year does not exceed the sum of the amounts specified under paragraphs (1) (a) and (3) (a) or (2) (a) and (3) (a), as the case requires, in respect of that year; and
- (b) if the year is a grant year, the total amount of commitments it incurs during the year does not exceed the sum of the amounts specified under paragraphs (1) (b) and (3) (b) or (2) (b) and (3) (b), as the case requires, in respect of that year. 25

“(5) In this section, a reference to commitments, in relation to a year, shall be read as a reference to the amounts that will become payable at any time as a result of the Authority entering into grant agreements during that grant year. 30

Applications

“26F. (1) The Authority shall not enter into an agreement with an eligible company under section 26D unless the company has made an application in writing to the Authority for a grant.

“(2) Subject to the regulations, an application shall be in a form approved by the Authority. 35

“(3) An application shall be deemed not to have been made until it has been received on behalf of the Authority by a member of the staff of the Authority or by a person appointed by the Authority to receive applications.

“(4) The Authority may refuse to consider an application unless the applicant furnishes such further information, or makes available to the 40

Authority such books or records, as the Authority specifies, being information, books or records that the Authority requires for the performance of its functions under this Part.

Results of projects to be exploited

5 “26G. The Authority shall not enter into an agreement under section 26D with an eligible company in relation to an automotive development project unless the Authority is satisfied, because of an undertaking given by the eligible company or by another person or otherwise, that the eligible company or
10 another eligible company will exploit, on normal commercial terms, and otherwise in a manner that will be for the benefit of the Australian economy, the results of that project.

Provisions of grant agreements

“26H. (1) There shall be specified in a grant agreement—

- 15 (a) the year or years in which any grant is, or grants are, to be payable under the agreement; and
(b) the amount of the grant or the aggregate of the amounts of the grants payable under the agreement in that year or in each of those years.

“ (2) A grant agreement shall not provide for the payment of grants after this Act ceases to have effect.

20 “ (3) Where a grant agreement provides for the payment of grants in each of 2 or more years, the number of those years shall not exceed 5 or such greater number as the Minister approves in relation to that agreement.

25 “ (4) The provisions of a grant agreement shall be such that, unless the Minister otherwise approves in relation to the agreement, the amount of the grant, or of the aggregate of the grants, payable under the agreement, shall not exceed an amount equal to 50% of the total amount that, in the opinion of the Authority, is or will be the expenditure incurred by the company to which the grant is made, after the date of the making of the application in pursuance of
30 which the agreement is entered into, in respect of the automotive development project to which the agreement relates.

“ (5) A grant agreement with an eligible company shall include—

- 35 (a) a provision requiring the company to keep, in writing in the English language or in a form in which they are readily accessible and readily convertible into writing in the English language, such accounts, books, documents and other records as correctly record and explain particulars of all expenditure incurred by the company in respect of the automotive development project to which the agreement relates and the application of all grants in respect of the project;
40 (b) a provision requiring the company to arrange for a qualified accountant nominated by the company and approved by the Authority—
(i) to examine, from time to time, the particulars of expenditure of the company referred to in paragraph (a); and

- (ii) to give to the Authority, at intervals specified by the Authority, a certificate stating whether, in the opinion of the accountant, the particulars are correct or not;
- (c) a provision enabling members of the Authority, or persons appointed by the senior member to inspect records for the purpose of this Act, to inspect the records referred to in paragraph (a) at all reasonable times and to make and retain copies of, or take and retain extracts from, those records; and 5
- (d) a provision requiring the company to keep the Authority informed of the progress of the automotive development project to which the agreement relates. 10

“(6) The Authority shall not refuse to approve a qualified accountant nominated by an eligible company for the purposes of a provision of a grant agreement referred to in paragraph (5) (b) unless the Authority is satisfied that it is not appropriate to approve the accountant because of an association between the accountant and the eligible company. 15

“(7) Subject to this Act, to any regulations under this Act and any guideline directions, a grant agreement may include such provisions as the Authority considers necessary.

“(8) Nothing in this Part shall be taken as preventing the inclusion in a grant agreement with an eligible company of a provision for the repayment by the company to the Commonwealth, on breach by the company of the agreement or in any other circumstances specified in the agreement, of the whole or a part of a grant made to the company under the agreement. 20

“(9) Without prejudice to the duty of the Authority to comply with the provisions of this Act and to observe the limits of its powers under this Act, a grant agreement is not invalidated by reason of a provision of this Act not having been complied with by the Authority in relation to the agreement or by reason of its not being within those limits. 25

Adjustment of grant by reason of financial assistance 30

“26J. Where—

- (a) an eligible company has received financial assistance from, or out of money provided by, the Commonwealth otherwise than under this Act or from, or out of money provided by, a State or another person or body; and 35
- (b) in the opinion of the Authority that financial assistance has aided the company to carry out an automotive development project,

the Authority may reduce the amount of any grant to the company in respect of that project to such extent as it thinks appropriate by reason of that financial assistance. 40

Abuse of Act

“26K. Where the Authority is of the opinion that—

- (a) an act or thing (including the making of an agreement, arrangement or payment, the incorporation of a body corporate or the allocation of expenditure as between different years) has been done with a view to the obtaining of, or to affecting the amount of, a grant; and
- (b) the act or thing is of such a nature that, having regard to the object of the scheme established by this Part, it constitutes an attempt to abuse this Act,

the Authority may, for the purposes of this Part, disregard any expenditure in or in relation to the doing of that act or thing, or make such adjustment to an amount of expenditure incurred by the company in respect of an automotive development project as it thinks necessary to prevent, or cancel or reduce the effects of, the abuse.

Advances in respect of grants

“26L. (1) Subject to sub-section (2) and to any guideline directions, the Authority may authorize the payment to an eligible company of an advance in respect of a grant that may become payable to the company.

“(2) The Authority shall not under sub-section (1) authorize the payment to an eligible company of an advance in respect of a grant unless the company gives adequate security for the repayment to the Commonwealth by the company of any amount repayable under sub-section (3) in relation to the advance.

“(3) Where an advance has been made to an eligible company in pursuance of sub-section (1) in respect of a grant, the company is liable, if the grant does not become payable or the amount of the grant is less than the advance, to repay to the Commonwealth, upon demand being made by the Authority, the amount of the advance or so much of the advance as exceeds the amount of the grant, as the case may be.

“(4) Without limiting the rights of the Commonwealth under any security given in respect of an advance made to an eligible company in pursuance of sub-section (2), an amount repayable under sub-section (3) is recoverable by the Commonwealth from the company in a court of competent jurisdiction as a debt due to the Commonwealth.

Guidelines for policies and practices of Authority

“26M. (1) The Minister may, from time to time, by notice in writing delivered to the senior member and expressed to be given under this section, give directions to the Authority 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, under this Part (including, without limiting the generality of the foregoing, the policies and practices to be followed by the Authority with respect to the entering into by the Authority of grant agreements and the

provisions to be included in such agreements), and the Authority shall comply with any such directions that are in force.

“(2) The Minister shall forthwith cause to be published in the *Gazette* particulars of any directions given under sub-section (1) and of any revocation of any such directions.

5

“(3) Nothing in this section authorizes the Minister to give a direction to the Authority in relation to a particular company.

Offences

“26N. (1) A person shall not, in or in connection with an application for a grant or otherwise in relation to a grant, knowingly make to the Authority, or to a person having duties or functions under this Part, a statement, whether oral or in writing, or present to the Authority or to such a person a book, record or document, that is false or misleading in a material particular.

10

Penalty:

- (a) if the offender is a natural person—\$2,000 or imprisonment for 12 months, or both; or
- (b) if the offender is a body corporate—\$10,000.

15

“(2) For the purposes of the application of sub-section (1) in relation to a body corporate, but without prejudice to the liability of any person other than the body corporate—

20

- (a) a statement made, or a book or document presented, by a person acting on behalf of the body corporate shall be deemed to be made or presented by the body corporate; and
- (b) the knowledge of any person employed by, or concerned in the management of, the body corporate, shall be deemed to be knowledge of the body corporate.

25

Recovery of grant on conviction

“26P. (1) Where a person is convicted of an offence against sub-section 26N (1), the court may, in addition to imposing a penalty under that sub-section, order the person to refund to the Commonwealth the amount of any grant wrongfully obtained by the person because of the commission of the offence.

30

“(2) Where—

- (a) a court makes an order under sub-section (1) ordering a person to refund to the Commonwealth the amount of a grant; and
- (b) the court has civil jurisdiction to the extent of the amount,

35

the order is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

“(3) Where—

- (a) a court makes an order under sub-section (1) ordering a person to refund to the Commonwealth the amount of a grant; and

40

(b) the court—

(i) does not have civil jurisdiction; or

(ii) has civil jurisdiction, but does not have civil jurisdiction to the extent of the amount,

5 the proper officer of the court shall issue to the Secretary to the Department a certificate in the prescribed form containing the prescribed particulars.

“(4) The certificate may, in the prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil jurisdiction to the extent of the amount ordered to be refunded to the Commonwealth.

10 “(5) Upon registration under sub-section (4), the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

“(6) The costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions (if any), be deemed to be payable under the certificate.

15 “(7) In this section, ‘grant’ includes an advance under section 26L.

Recovery of overpayments to a person

“26Q. (1) Where an amount of grant to an eligible company has been paid in consequence of the making of a statement, or the presentation of a book, record or document by or on behalf of the company that was, whether or not to
20 the knowledge of the company or the person making the statement or presenting the book, record or document, false or misleading, an amount equal to the amount so paid is, unless a court has made an order under section 26P in respect of that amount, recoverable by the Commonwealth from the company in a court of competent jurisdiction as a debt due to the Commonwealth.

25 “(2) For the purposes of sub-section (1), a certificate under the hand of the senior member that an amount of grant has been paid in consequence of the making of a statement or the presentation of a book, record or document, is *prima facie* evidence of the matters stated in the certificate.

“(3) In this section, ‘grant’ includes an advance under section 26L.

30 Transitional

“26R. Where—

(a) a grant agreement has been entered into between the Authority and an eligible company in respect of an automotive development project; and

35 (b) the company, on or after 18 October 1984 and before the commencement of this Part, made an application to the Authority for a grant of financial assistance in respect of the project,

40 expenditure incurred by the company in respect of the project after the day on which it made that application shall, for the purposes of this Act, be deemed to have been incurred after the day on which the application under section 26F for the grant to which the grant agreement relates was made.

Money to be appropriated

“26S. Payments of grants and of advances in respect of grants shall be made out of money appropriated by the Parliament for the purposes of the payment of grants and advances under this Part.”.

9. Before section 27 of the Principal Act the following section is inserted in Part V: 5

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

“27A. (1) Where the Minister is satisfied that it is in the public interest that the Commonwealth should carry out a project that, if the Commonwealth were an eligible company, would be an automotive development project, the Minister may authorize the Authority to make arrangements, on behalf of the Commonwealth, for the carrying out of that project. 10

“(2) Any arrangements made by the Authority by virtue of sub-section (1) shall be made in accordance with the directions of the Minister.”. 15

Annual Report

10. Section 27 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) Reports under this section—

- (a) shall include statements of the names of eligible companies with which the Authority has entered into grant agreements during the relevant year and the respective amounts of the grants provided for under those agreements; 20
- (b) shall, subject to sub-section 29 (1), include information concerning the nature of the automotive development projects in relation to which the Authority has entered into grant agreements during the relevant year; 25
- (c) shall include—
 - (i) statements of the names of persons with whom the Authority has made arrangements under section 27A during the relevant year for the carrying out of projects; 30
 - (ii) statements of the respective amounts of the payments to those persons provided for under those arrangements; and
 - (iii) particulars of the progress of those projects; and
- (d) shall include particulars of any guideline directions given during the relevant year.”. 35

Confidentiality

11. Section 29 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “except for the purposes of this Act or of the *Industrial Research and Development Incentives Act 1976* or” after “shall not,”; and 40

(b) by inserting after sub-section (1) the following sub-section:

“(1A) Sub-section (1) does not apply to the supply of information to—

- (a) the Minister;
- (b) the Secretary to the Department; or
- (c) 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

12. The *Industrial Research and Development Incentives Act 1976*² is in this Part referred to as the Principal Act.

Secrecy

13. Section 22 of the Principal Act is amended by omitting from sub-section (2) “or of the previous Act” and substituting “, of the previous Act or of the *Automotive Industry Authority Act 1984*”.

NOTES

1. No. 106, 1984.
2. No. 85, 1976, as amended. For previous amendments, see Nos. 36 and 211, 1978; No. 44, 1981; No. 80, 1982; Nos. 39 and 121, 1983; and No. 165, 1984.

