

Automotive Industry Structural Adjustment Program

Ministerial Guidelines 2008

AISAP MG No. 1

Program Policy Objectives

The purpose of these Guidelines is to provide a framework for the operation of the Automotive Industry Structural Adjustment Program.

In administering the Program, the Minister has regard to the following policy objectives:

- to facilitate structural adjustment within the automotive supply chain to achieve global scale and retain core capabilities, by providing assistance to firms to merge;
- to strengthen the automotive components sector to enable it to continue providing secure employment to as many skilled workers as possible.

1 Name of Program and commencement

- (1) These Guidelines are the Automotive Industry Structural Adjustment Program Ministerial Guidelines 2008, also known as the *AISAP*.
- (2) These Guidelines commence on 1 January 2009.

2 Definitions

- (1) Unless the contrary intention appears, words and phrases used in these Guidelines have the same respective meanings as they have in the *ACIS Administration Act 1999*.

[Note: The *ACIS Administration Act 1999* contains definitions of, for example, *automotive component*, *automotive services*, *automotive machine tools* and *automotive tooling*.]

- (2) Also, unless the contrary intention appears, words and phrases defined, and grammatical forms referred to, in the *Acts Interpretation Act 1901* apply *mutatis mutandis* to these Guidelines as if the Guidelines were an Act and as if each provision of the Guidelines were a section of an Act.

[Note: This provision is intended to ensure that the relevant definitions and grammatical forms referred to in the *Acts Interpretation Act 1901* apply to these Guidelines. That Act provides definitions of such terms as *the Minister*, *the Secretary* and *the Department*.]

- (3) However, in this Program:

ACIS participant means a participant registered as an automotive component producer, an automotive service provider an automotive machine tool producer or a motor vehicle producer under the *ACIS Administration Act 1999*.

completion, for a resultant entity, means the time at which the contracts giving rise to the resultant entity are executed.

eligible activity is activity that is undertaken as a direct consequence of the merger or acquisition and may, for example, include items relating to legal expenses, due diligence and plant and equipment in the circumstances set out in these Guidelines.

eligible expenditure has the meaning given in section 5.

exceptional circumstances means circumstances that might create an imminent and significant disruption within the automotive industry, including but not limited to, the shutting down of motor vehicle production.

exceptional circumstances grant means a grant given under section 18.

resultant entity has the same meaning as in paragraph 3 (1)(b).

second hand plant or equipment means second-hand plant and equipment described in section 4.

structural adjustment grant has the meaning given in subsection 4 (1).

structural adjustment initiative has the meaning given in section 3.

3 Meaning of *structural adjustment initiative*

- (1) For this Program, a *structural adjustment initiative* is an initiative that:
 - (a) involves the restructuring (including by way of merger or acquisition) or reconfiguration of 2 or more participant entities each of which is not an associate of another entity taking part in the restructuring or reconfiguration; and
 - (b) results in a resultant entity that is likely to be more financially viable or competitive than would have been the case if the restructuring or reconfiguration had not taken place; and
 - (c) has the effect that only the resultant entity will be eligible to apply to be an ACIS participant after the completion of the restructuring or reconfiguration; and
 - (d) is the subject of a statement of strategic business intent that includes the business, operational and financial strategies that will guide the resultant entity to sustainable operations beyond the completion of the restructuring or reconfiguration; and
 - (e) is likely to result in demonstrable economic and strategic benefits to the automotive industry (including, but not limited to, better employment outcomes than would have been the case in the absence of the initiative).
- (2) To avoid doubt, except in exceptional circumstances, an internal restructure for an entity is not to be regarded as a structural adjustment initiative for the purposes of these Guidelines.

4 Meaning of *structural adjustment grant*

- (1) A *structural adjustment grant* is a grant relating to eligible expenditure that is incurred by a resultant entity for an eligible activity relating to a structural adjustment initiative, including, if applicable, the acquisition of second-hand plant or equipment that:
 - (a) complies with subsection (2); and
 - (b) is part of, or is a direct consequence of, a structural adjustment initiative

- (2) For paragraph (1) (b), the second-hand plant or equipment:
 - (a) must be acquired by the resultant entity from 1 or more of the entities taking part in the structural adjustment initiative; and
 - (b) must be plant or equipment the book value of which does not exceed the value of equivalent new plant or equipment.

5 Eligible expenditure for a structural adjustment grant

- (1) Expenditure incurred by a resultant entity is *eligible expenditure* for a structural adjustment grant only if the expenditure is incurred:
 - (a) for a purpose mentioned in subsection 4 (1); and
 - (b) in accordance with this section.

[Note: Items relating to legal expenses, due diligence and a percentage value of plant and equipment, for example, can be regarded as eligible expenditure in the circumstances set out in these Guidelines. Section 6 gives some examples of what is not eligible expenditure.]

- (2) For expenditure on an eligible activity:
 - (a) expenditure incurred by any of the entities taking part in the structural adjustment initiative in respect of the eligible activity is taken to have been incurred by the resultant entity; and
 - (b) only the expenditure necessary to complete the structural adjustment initiative is eligible expenditure; and
 - (c) only expenditure regarded as being expenditure incurred before completion and set out in the audited statement referred to in paragraph 14(c) is to be considered in determining eligible expenditure.
- (3) For expenditure on second-hand plant or equipment that is purchased otherwise than under a hire purchase agreement or by finance through a finance lease:
 - (a) 75% of the book value of the plant or equipment is taken to be the value of the plant or equipment as capitalised in the resultant entity's accounts; and
 - (b) expenditure on the plant or equipment is taken to have been incurred only after full payment for the plant or equipment has been made.
- (4) For expenditure on second-hand plant or equipment that is purchased under a hire purchase agreement or by finance through a finance lease:
 - (a) 75% of the book value of the plant or equipment is taken to be the value of the plant or equipment as capitalised in the resultant entity's accounts; and
 - (b) expenditure on the plant or equipment is taken to have been incurred only after the first instalment under the agreement or lease is paid.
- (5) The expenditure must reflect costs based on normal commercial values and arms length transactions.

[Note: In working out the amount of eligible expenditure for an AISAP grant, the Minister may act under section 17 if it appears to the Minister that expenditure has been incurred in a transaction that was not at arms length.]

6 Expenditure on routine business activity and employee entitlements not eligible expenditure

To avoid doubt, expenditure is not eligible expenditure for a structural adjustment grant if it relates to:

- (a) a business activity that is routinely undertaken; or
- (b) employee entitlements, including redundancy entitlements.

7 Application for preliminary approval for a structural adjustment grant

- (1) This section applies to an entity if the entity intends to take part in a structural adjustment initiative.
- (2) An entity that intends to apply for a structural adjustment grant must apply to the Secretary, acting on behalf of the Minister, on or after 1 January 2009.

[Note: Agreement with an application does not, of itself, give rise to any eligibility to a grant: see subsections 11 (6) and 23 (2).]

- (3) The application must:
 - (a) be made jointly by all the entities intending to take part in the structural adjustment initiative; and
 - (b) be in writing in a form approved by the Secretary; and
 - (c) be signed and dated in the manner indicated in the form; and
 - (d) be accompanied by the information mentioned in section 8.

8 Information to be given with application

For paragraph 7 (3) (d), the application must be accompanied by the following written information:

- (a) the information mentioned in section 9 about each entity intending to take part in the structural adjustment initiative;
- (b) details of the structural adjustment initiative, including:
 - (i) the principles underlying the structural adjustment initiative; and
 - (ii) the benefits and risks of the structural adjustment initiative; and
 - (iii) the expected outcomes of the structural adjustment initiative, addressing, in particular, the matters mentioned in paragraphs 3 (1)(b), (c) and (e) and enclosing the statement referred to in paragraph 3 (1)(d); and
 - (iv) the corporate structure of the participating parties and the resultant entity;
- (c) details of the likely costs and other likely implications of the structural adjustment initiative, including:
 - (i) the projected cost to each entity taking part in the structural adjustment initiative; and
 - (ii) the impact on employees of each entity at all locations; and
 - (iii) the funding arrangements for the structural adjustment initiative;
- (d) the estimated total eligible expenditure in respect of which claims for structural adjustment grants are likely to be made by the entity.

9 Further information to be given with the application

For paragraph 8 (a), the application must include the following information:

- (a) the name of each of the applicant entities;
- (b) for each applicant entity:
 - (i) its ABN or ACN; and
 - (ii) its date of formation or incorporation;as the case requires;
- (c) if an applicant entity is a trust — the type of trust and details of the beneficiaries;
- (d) street and postal contact addresses for each applicant entity;
- (e) the names of directors and major shareholders (if applicable), and of key management personnel for each applicant entity;
- (f) details of the size of the entities (including current employment levels and the employment levels for the 2 income years of each entity immediately preceding the income year in which the application is made), as well as annual turnover and a general description of each entity's activities;
- (g) details of any other entity whose operations are required, under the *Corporations Act 2001*, to be consolidated with those of the applicant entities, including the other entity's ACN, the names of directors and major shareholders, and an organisation chart for the consolidated operations.

10 Additional information

- (1) If it appears to the Secretary that an application, or information submitted with an application, is incomplete, or is insufficient to enable the Minister to make a decision under section 11, the Secretary may ask an entity, in writing:
 - (a) to make a further application in such form as is specified in the request; or
 - (b) to give the further information, in writing, specified in the request.
- (2) The entity must comply with a request under subsection (1) within a reasonable period required by the Secretary in the request.

11 Consideration of application

- (1) The Secretary must give the Minister, as soon as practicable after the Secretary receives the relevant documents:
 - (a) an application made under section 7; and
 - (b) any further application made under paragraph 10 (a); and
 - (c) the documents and information accompanying the application; and
 - (d) any further information given under paragraph 10 (b).
- (2) If the Minister is satisfied, after considering the application and the information, that the proposed structural adjustment initiative would, if carried out in accordance with the application and information, comply with section 3, the Minister may agree to the application.

- (3) If the Minister is not so satisfied as to the matter set out in subsection (2), the Minister must refuse the application.
- (4) If the Minister agrees to the application, a copy of the Minister's agreement must be given in writing to each of the entities intending to take part in the structural adjustment initiative.
- (5) If the Minister refuses the application, the Minister must give notice of the refusal to each of the entities.
- (6) The Minister's agreement to an application does not, of itself, give rise to any eligibility to a grant.
- (7) However, the Minister may indicate to an applicant, without prejudice, an upper limit of prospective assistance that may be available to the applicant.

12 Application for payment of structural adjustment grant

- (1) If:
 - (a) an application for a structural adjustment grant is submitted in accordance with sections 7 and 8 and, if applicable, section 10; and
 - (b) the Minister agrees to the application under section 11; and
 - (c) completion of the structural adjustment initiative has occurred;the resultant entity may request the Secretary, acting on behalf of the Minister, in accordance with this section and section 14 to pay to the resultant entity a structural adjustment grant.
- (2) An application for payment must be:
 - (a) in writing, in a form approved by the Secretary; and
 - (b) signed and dated in the manner indicated in the form; and
 - (c) accompanied by the documents and information mentioned in section 14.

13 Condition of being paid — identity of grantee and amount

It is a condition of being paid a structural adjustment grant that the entity receiving the grant agrees to the publication of:

- (a) its identity; and
- (b) the amount of the grant it receives.

14 Information in support of seeking payment of a structural adjustment grant

For paragraph 12 (2) (c), the application must be accompanied by the following documents and information:

- (a) details of the structural adjustment initiative, including:
 - (i) the outcomes, addressing, in particular, the matters mentioned in paragraphs 3 (1)(b), (c) and (e); and
 - (ii) the resultant entity's corporate structure; and
 - (iii) the costs and other implications of the structural adjustment initiative;

- (b) a detailed description of each eligible activity carried on in respect of which payment is sought;
- (c) a statement of eligible expenditure incurred by the resultant entity in respect of which payment is sought, together with an independent auditor's report verifying the eligible expenditure;
- (d) the statement of strategic business intent referred to in paragraph 3 (1)(d), updated if necessary;
- (e) a statement giving details of any second-hand plant or equipment to which section 4 applies;
- (f) a statement of the nature and amount of contribution to the structural adjustment initiative mentioned in section 16.

15 Assessment of request for payment of a structural adjustment grant

- (1) On receipt of a request for payment of a structural adjustment grant, the Minister must assess the request and decide whether the resultant entity is eligible for a grant of an amount.
- (2) Before the Minister can be satisfied that an entity is eligible for a grant of an amount, the Minister must be satisfied as to the matters set out in this section, as far as applicable.
- (3) The Minister must be satisfied that the structural adjustment initiative complies with the requirements of section 3.
- (4) The Minister must be satisfied that second-hand plant or equipment:
 - (a) was acquired as part of, or as a direct consequence of, the structural adjustment initiative; and
 - (b) is second-hand plant or equipment to which section 4 applies.
- (5) The Minister must be satisfied as to the amount of eligible expenditure incurred by the entity.
- (6) The Minister must be satisfied that the request has been made in accordance with the requirements of sections 12 and 14.
- (7) In addition, in deciding whether the resultant entity is eligible for a grant of an amount, the Minister must take into account, as far as applicable, sections 17 and 19.

16 Other contributions to structural adjustment initiative

In deciding whether the resultant entity is eligible for a grant of an amount, the Minister may take into account the nature and amount of contribution to the structural adjustment initiative:

- (a) by the Commonwealth, State or Territory; and
- (b) by any other source, including local government.

17 Arms length expenditure

In working out the amount of eligible expenditure for a structural adjustment grant, if it appears to the Minister that expenditure has been

incurred in a transaction that was not at arms length, the Minister may take the amount of the expenditure to be the amount that would reasonably have been expected to have been incurred if the transaction had been at arms length.

18 Exceptional circumstances grant

- (1) The Minister may accept an application by an ACIS participant for an exceptional circumstances grant for a structural adjustment proposal under exceptional circumstances.
- (2) An application under subsection (1) need not involve a second entity.
- (3) In determining whether to consider such an application and whether to provide an exceptional circumstances grant, the Minister is to have regard to:
 - (a) the extent to which assistance would contribute to improving the internal efficiencies and competitiveness of the entity: and
 - (b) the strategic importance of the applicant entity to the automotive supply chain and the automotive industry; and
 - (c) the economic and strategic benefits to the automotive industry of the proposal (including, but not limited to, better employment outcomes than would have been the case if the proposal did not proceed); and
 - (d) the potential for exceptional circumstances assistance to contribute to the future consolidation of the automotive supply chain.
- (4) For paragraph (3) (a), activities that contribute to improving internal efficiencies may include, but are not limited to consolidation of 2 or more separate plants or facilities into a lesser number of plants or facilities.
- (5) However, the reduction of employment through the payment of employee redundancy or other entitlements is not to be considered to be contributing to improving internal efficiencies.
- (6) This section ceases to apply at the end of 30 June 2010.

19 Cap for structural adjustment grants

The amount of a structural adjustment grant made to an entity in respect of eligible expenditure incurred by the entity must not exceed the amount of that eligible expenditure.

20 Notice of decisions

The Minister must give notice in writing to an entity making a request for a structural adjustment grant, of the Minister's decision as to the entity's eligibility for payment of a grant.

21 Payment of structural adjustment grants

- (1) If the Minister decides that an entity is eligible to be paid a grant of an amount, the Secretary must pay the amount to the entity.
- (2) The grant must be paid as soon as practicable after the Minister has made the decision.

22 Grants not transferable

A structural adjustment grant is not transferable (whether by way of, or in consequence of sale, assignment, charge, execution, bankruptcy, insolvency or otherwise) except with the approval, in writing, of the Secretary.

23 Grants to be at discretion of Minister

- (1) A grant is available under this Program at the discretion of the Minister.
- (2) Compliance by an applicant with the provisions set out in this Program does not, in itself, create any entitlement to be paid a grant.

24 Caps on grants

- (1) The Minister must not agree to a structural adjustment grant or exceptional circumstances grant if the amount of all structural adjustment grants and exceptional circumstances grants so agreed would exceed \$78.016 million.
- (2) Further, the Minister must not agree to a structural adjustment grant or exceptional circumstances grant for a particular year if the amount of all structural adjustment grants and exceptional circumstances grants so agreed for that year would exceed the relevant appropriation for that year.

25 Administration

The Secretary may authorise an Australian Public Service employee performing duties in the Department to perform administrative tasks on the Secretary's behalf for the Program.