



# **Textile, Clothing and Footwear Strategic Investment Program Act 1999**

**No. 182, 1999**



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**No. 182, 1999**

**An Act about the Textile, Clothing and Footwear  
Strategic Investment Program, and for other  
purposes**

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# **Textile, Clothing and Footwear Strategic Investment Program Act 1999**

**No. 182, 1999**

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**An Act about the Textile, Clothing and Footwear Strategic Investment Program, and for other purposes**

*[Assented to 22 December 1999]*

The Parliament of Australia enacts:

Section 1

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## Part 1—Introduction

### 1 Short title

This Act may be cited as the *Textile, Clothing and Footwear Strategic Investment Program Act 1999*.

### 2 Commencement

This Act commences on the day on which it receives the Royal Assent.

### 3 Simplified outline

The following is a simplified outline of this Act:

- This Act provides a framework for the implementation of the Textile, Clothing and Footwear Strategic Investment Program.
- The Minister is required to formulate a scheme (the *TCF (SIP) scheme*) for the making of grants and/or loans in connection with the design and manufacture, in Australia, of eligible TCF products.
- The total of the grants paid, and loans made, under the TCF (SIP) scheme must not exceed \$700 million, reduced by any Regional Assistance Program supplementation payments.
- The TCF (SIP) scheme will provide for 5 types of grants, to be known as follows:
  - (a) grants in respect of new TCF plant/building expenditure;
  - (b) grants in respect of TCF research and development expenditure;



- |   |
|---|
| <p>(c) grants in respect of TCF value-adding;</p> <p>(d) special grants in respect of second-hand TCF plant expenditure;</p> <p>(e) special miscellaneous grants in respect of TCF-dependent communities.</p> |
|---|
- The TCF (SIP) scheme will run for 5 financial years, beginning with the 2000-2001 year. However, grants in respect of new TCF plant/building expenditure may be made for the 1998-1999 and 1999-2000 years, and special grants may be made for the 1999-2000 year.
  - Grants under the TCF (SIP) scheme are to be made in arrears.
  - Entities who wish to obtain grants under the TCF (SIP) scheme may be required to register under the scheme and to submit strategic business plans and accounts.

#### 4 Definitions

In this Act:

***Australia***, when used in a geographical sense, includes all the external Territories.

***bounty*** means bounty to which paragraph 51(iii) of the Constitution applies.

***claim*** means a claim for a grant.

***designated industry program*** means a program or scheme that is:

- (a) administered by the Commonwealth; and
- (b) specified in the regulations.

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**entity** has the same meaning as in the *Income Tax Assessment Act 1997*.

**grant** means a grant under the TCF (SIP) scheme.

**importation into Australia** has the same meaning as in section 50 of the *Customs Act 1901*.

**income year** has the same meaning as in the *Income Tax Assessment Act 1997*.

**loan** means a loan under the TCF (SIP) scheme.

**manufacture** includes make a physical or chemical transformation or conversion.

**scheme debt** means:

- (a) so much of an amount paid, or purportedly paid, to an entity by way of a grant as represents an overpayment; or
- (b) an amount due and payable by an entity to the Commonwealth under a loan; or
- (c) an amount that is payable as mentioned in subsection 20(2) (which deals with advances); or
- (d) an amount that is repayable as mentioned in section 43 (which deals with conditional grants).

**Secretary** means the Secretary to the Department.

**strategic business plan** means a strategic business plan that incorporates a strategic investment plan.

**TCF (SIP) scheme** means the scheme in force under section 8.

## 5 Continuity of partnerships

For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

## **6 Crown to be bound**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

## **7 External Territories**

This Act extends to all the external Territories.

## **Part 2—TCF (SIP) scheme**

### **Division 1—General provisions**

#### **8 TCF (SIP) scheme**

By the end of the period of 14 days beginning on the day on which this Act receives the Royal Assent, the Minister must, by writing, formulate a scheme (the ***TCF (SIP) scheme***) for the making of grants and/or loans in connection with, or incidental to, any or all of the following:

- (a) the manufacture in Australia of products that, under the scheme, are taken to be eligible TCF products;
- (b) the design in Australia, for manufacture in Australia, of products:
  - (i) that, under the scheme, are taken to be eligible TCF products; and
  - (ii) some or all of which are intended to be sold in Australia;
- (c) the design in Australia, for manufacture outside Australia, of products:
  - (i) that, under the scheme, are taken to be eligible TCF products; and
  - (ii) some or all of which are intended to be sold in Australia;

where the importation into Australia of some or all of the products is or will be covered by a designated industry program.

#### **9 \$700 million cap**

- (1) The TCF (SIP) scheme must make provision for ensuring that the total of the grants paid, and loans made, under the scheme does not exceed the amount worked out using the formula:

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\$700 million – Regional Assistance Program  
supplementation payments

where:

***Regional Assistance Program supplementation payments*** means  
the total of the amounts determined under section 37.

- (2) If a loan under the TCF (SIP) scheme is repaid at a particular time,  
subsection (1) has effect after that time as if the loan had never  
been made.

## Division 2—General policy objectives for the grants provisions of the scheme

### 10 General policy objectives for the grants provisions of the scheme

The TCF (SIP) scheme, to the extent to which it deals with grants, must be directed towards ensuring the achievement of the policy objectives set out in the following sections:

- (a) section 11 (which deals with types of grants);
- (b) section 12 (which deals with the duration of the scheme);
- (c) section 13 (which deals with making grants in arrears);
- (d) section 14 (which deals with the cap for grants in respect of TCF value-adding);
- (e) section 15 (which deals with the sales-based cap for grants).

### 11 Types of grants

- (1) This section sets out a policy objective for the TCF (SIP) scheme.
- (2) The objective is that there are to be 5 types of grants, as follows:
  - (a) the first type of grants are to be known as ***grants in respect of new TCF plant/building expenditure***;
  - (b) the second type of grants are to be known as ***grants in respect of TCF research and development expenditure***;
  - (c) the third type of grants are to be known as ***grants in respect of TCF value-adding***;
  - (d) the fourth type of grants are to be known as ***special grants in respect of second-hand TCF plant expenditure***;
  - (e) the fifth type of grants are to be known as ***special miscellaneous grants in respect of TCF-dependent communities***.
- (3) To avoid doubt, paragraphs (2)(a), (b), (c), (d) and (e) do not limit the range of matters in respect of which grants may be made.

## **12 Duration of scheme**

- (1) This section sets out policy objectives for the TCF (SIP) scheme.
- (2) The objectives are as follows:
  - (a) the objective that grants in respect of new TCF plant/building expenditure may only be made to an entity in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity during:
    - (i) the entity's 1998-1999 income year; or
    - (ii) the entity's 1999-2000 income year; or
    - (iii) the entity's 2000-2001 income year; or
    - (iv) the entity's 2001-2002 income year; or
    - (v) the entity's 2002-2003 income year; or
    - (vi) the entity's 2003-2004 income year; or
    - (vii) the entity's 2004-2005 income year;
  - (b) the objective that grants in respect of TCF research and development expenditure may only be made to an entity in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity during:
    - (i) the entity's 2000-2001 income year; or
    - (ii) the entity's 2001-2002 income year; or
    - (iii) the entity's 2002-2003 income year; or
    - (iv) the entity's 2003-2004 income year; or
    - (v) the entity's 2004-2005 income year;
  - (c) the objective that:
    - (i) special grants in respect of second-hand TCF plant expenditure; and
    - (ii) special miscellaneous grants in respect of TCF-dependent communities;may only be made to an entity in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity during:
    - (iii) the entity's 1999-2000 income year; or

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- (iv) the entity's 2000-2001 income year; or
- (v) the entity's 2001-2002 income year; or
- (vi) the entity's 2002-2003 income year; or
- (vii) the entity's 2003-2004 income year; or
- (viii) the entity's 2004-2005 income year;
- (d) the objective that grants in respect of TCF value-adding may only be made to an entity in respect of activities that, under the scheme, are taken to be eligible activities carried on by the entity during:
  - (i) the entity's 2000-2001 income year; or
  - (ii) the entity's 2001-2002 income year; or
  - (iii) the entity's 2002-2003 income year; or
  - (iv) the entity's 2003-2004 income year; or
  - (v) the entity's 2004-2005 income year.

### **13 Grants to be made in arrears**

- (1) This section sets out policy objectives for the TCF (SIP) scheme.
- (2) The objectives are as follows:
  - (a) the objective that grants in respect of new TCF plant/building expenditure must not be made to an entity in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity during:
    - (i) the entity's 1998-1999 income year; or
    - (ii) the entity's 1999-2000 income year;unless the entity makes a claim for the grant after the end of the entity's 2000-2001 income year;
  - (b) the objective that:
    - (i) special grants in respect of second-hand TCF plant expenditure; and
    - (ii) special miscellaneous grants in respect of TCF-dependent communities;must not be made to an entity in respect of amounts that, under the scheme, are taken to be eligible expenditure



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incurred by the entity during the entity's 1999-2000 income year unless the entity makes a claim for the grant after the end of the entity's 2000-2001 income year;

(c) the objective that:

- (i) grants in respect of new TCF plant/building expenditure; and
- (ii) grants in respect of TCF research and development expenditure; and
- (iii) special grants in respect of second-hand TCF plant expenditure; and
- (iv) special miscellaneous grants in respect of TCF-dependent communities;

must not be made to an entity in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity during:

- (v) the entity's 2000-2001 income year; or
- (vi) the entity's 2001-2002 income year; or
- (vii) the entity's 2002-2003 income year; or
- (viii) the entity's 2003-2004 income year; or
- (ix) the entity's 2004-2005 income year;

unless the entity makes a claim for the grant after the end of the income year concerned;

(d) the objective that grants in respect of TCF value-adding must not be made to an entity in respect of activities that, under the scheme, are taken to be eligible activities carried on by the entity during:

- (i) the entity's 2000-2001 income year; or
- (ii) the entity's 2001-2002 income year; or
- (iii) the entity's 2002-2003 income year; or
- (iv) the entity's 2003-2004 income year; or
- (v) the entity's 2004-2005 income year;

unless the entity makes a claim for the grant after the end of the income year concerned.

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**14 Cap for grants in respect of TCF value-adding**

- (1) This section sets out a policy objective for the TCF (SIP) scheme.
- (2) The objective is that the total grants in respect of TCF value-adding that are made to an entity in respect of activities that, under the scheme, are taken to be eligible activities carried on by the entity during a particular income year of the entity must not exceed whichever is the lesser of:
  - (a) 5% of the amount that, under the scheme, is taken to be the total eligible TCF value added by the entity during that income year; and
  - (b) the sum of:
    - (i) the total grants in respect of new TCF plant/building expenditure made to the entity in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity during that income year; and
    - (ii) the total grants in respect of TCF research and development expenditure made to the entity in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity during that income year; and
    - (iii) the total special grants in respect of second-hand TCF plant expenditure made to the entity in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity during that income year.

**15 Grants cap based on eligible revenue and eligible start-up investment amount**

- (1) This section sets out policy objectives for the TCF (SIP) scheme.

*Cap based on eligible revenue*

- (2) The first objective is that the total of the following grants that become payable to an entity during a particular income year of the entity (the *claim year*):
- (a) grants in respect of new TCF plant/building expenditure made in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity otherwise than during a period that, under the scheme, is taken to be an eligible start-up period of the entity;
  - (b) grants in respect of TCF research and development expenditure made in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity otherwise than during a period that, under the scheme, is taken to be an eligible start-up period of the entity;
  - (c) special grants in respect of second-hand TCF plant expenditure made in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity otherwise than during a period that, under the scheme, is taken to be an eligible start-up period of the entity;
  - (d) special miscellaneous grants in respect of TCF-dependent communities made in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity otherwise than during a period that, under the scheme, is taken to be an eligible start-up period of the entity;
  - (e) grants in respect of TCF value-adding made in respect of activities carried on by the entity otherwise than during a period that, under the scheme, is taken to be an eligible start-up period of the entity;

must not exceed 5% of the amount that, under the scheme, is taken to be the total eligible revenue derived by the entity, during the income year of the entity preceding the claim year, from sales of products that, under the scheme, are taken to be eligible TCF products.

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*Cap based on eligible start-up investment amount*

- (3) The second objective is that the total of the following grants that become payable to an entity during a particular income year of the entity (the ***claim year***) and any income years of the entity that are earlier than the claim year:
- (a) grants in respect of new TCF plant/building expenditure made in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity during a period that, under the scheme, is taken to be an eligible start-up period of the entity;
  - (b) grants in respect of TCF research and development expenditure made in respect of amounts that, under the scheme, are taken to be eligible expenditure incurred by the entity during a period that, under the scheme, is taken to be an eligible start-up period of the entity;
  - (c) grants in respect of TCF value-adding made in respect of activities carried on by the entity during a period that, under the scheme, is taken to be an eligible start-up period of the entity;

must not exceed 15% of the amount that, under the scheme, is taken to be the total of the eligible start-up investment amounts of the entity for each of the income years of the entity that are earlier than the claim year.

*When grant becomes payable*

- (4) For the purposes of this section, a grant becomes payable to an entity when a determination is made under the scheme that the entity is entitled to be paid the grant.

## **Division 3—Registration for the purposes of the scheme**

### **16 Registration for the purposes of the scheme**

- (1) For the purposes of the application of the TCF (SIP) scheme to a type of grant that, under the scheme, is taken to be a registration-linked grant, the scheme may impose requirements relating to the registration of entities.
- (2) The requirements relating to registration imposed by the TCF (SIP) scheme may include (but are not limited to) any or all of the following requirements:
  - (a) a requirement that an entity must apply for registration;
  - (b) a requirement that an entity's application for registration be accompanied by a statement issued by a specified person as to the entity's future financial viability;
  - (c) a requirement that an entity's application for registration be accompanied by such information about the entity as is specified in the scheme;
  - (d) a requirement that an entity's application for registration be accompanied by such a fee as is ascertained in accordance with the scheme.
- (3) The TCF (SIP) scheme may provide for any or all of the following consequences for entities that do not comply with a particular requirement relating to registration:
  - (a) the consequence that the entity is not eligible for a registration-linked grant;
  - (b) the consequence that the entity's eligibility for a registration-linked grant is subject to restriction or reduction;
  - (c) the consequence that the time of payment of a registration-linked grant to the entity is deferred.
- (4) The information referred to in paragraph (2)(c) may include (but is not limited to) statistical information.

## **Division 4—Strategic business plans and accounts**

### **17 Strategic business plans**

The TCF (SIP) scheme must provide that an entity is not eligible for a grant unless the entity has complied with such requirements (if any) as are imposed by the scheme in relation to the content and submission of:

- (a) strategic business plans; and
- (b) variations of strategic business plans.

### **18 Accounts**

- (1) The TCF (SIP) scheme may provide that an entity ascertained in accordance with the scheme is not eligible for a grant unless the entity has complied with such requirements as are imposed by the scheme in relation to the submission of audited accounts and audited financial statements.
- (2) The TCF (SIP) scheme may provide that an entity ascertained in accordance with the scheme is not eligible for a grant unless the entity has complied with such requirements as are imposed by the scheme in relation to the submission of unaudited accounts and unaudited financial statements.

## **Division 5—Other matters relating to the scheme**

### **19 Loans**

A loan must not be made to an entity after the end of the entity's 2004-2005 income year.

### **20 Advances on account of grants**

- (1) The TCF (SIP) scheme may provide for advances on account of grants that may become payable.
- (2) If:
  - (a) an entity receives an amount by way of an advance on account of a grant that may become payable to the entity; and
  - (b) that amount is greater than the amount of the grant;the entity is liable to pay to the Commonwealth the amount of the excess.

### **21 Scheme may confer administrative powers on the Minister or the Secretary**

- (1) The TCF (SIP) scheme may make provision with respect to a matter by conferring on the Minister a power to make a decision of an administrative character.
- (2) The TCF (SIP) scheme may make provision with respect to a matter by conferring on the Secretary a power to make a decision of an administrative character.

### **22 Reconsideration and review of decisions**

- (1) The TCF (SIP) scheme must contain provisions under which:
  - (a) an entity who is affected by a decision of the Secretary under the scheme may, if dissatisfied with the decision, by notice given to the Secretary within such period as is ascertained in

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- accordance with the scheme, request the Secretary to reconsider the decision; and
- (b) the Secretary is required to reconsider the decision and is empowered to confirm or revoke the decision or to vary the decision in such manner as the Secretary thinks fit; and
  - (c) applications may be made to the Administrative Appeals Tribunal for review of decisions of the Secretary that have been confirmed or varied as mentioned in paragraph (b).
- (2) The period mentioned in paragraph (1)(a) must not be shorter than 30 days after the day on which the decision first comes to the attention of the entity concerned.
  - (3) The TCF (SIP) scheme must provide that the reasons for making a request mentioned in paragraph (1)(a) must be set out in the request.
  - (4) If a request is made as mentioned in paragraph (1)(a) in respect of a decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.
  - (5) The TCF (SIP) scheme must provide that, if the Secretary does not confirm, revoke or vary a decision before the end of the period of 30 days after the day on which the Secretary received the request to reconsider the decision, the Secretary is taken, at the end of that period, to have confirmed the decision.
  - (6) The TCF (SIP) scheme must provide that, if the Secretary confirms, revokes or varies the decision before the end of the period referred to in subsection (5), the Secretary must, by notice given to the applicant, inform the applicant of the result of the reconsideration of the decision and the reasons for confirming, revoking or varying the decision, as the case may be.
  - (7) If, because of the operation of a provision covered by subsection (5), a decision is taken to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the
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prescribed time for making application for review of the decision were the period:

- (a) commencing on the day on which the decision is taken to have been confirmed; and
- (b) ending on the 28th day after that day.

## **23 Statement to accompany notification of decisions**

- (1) The TCF (SIP) scheme must provide that, if:
  - (a) written notice is given to an entity affected by a decision of the Secretary under the scheme; and
  - (b) that notice is to the effect that the decision has been made; that notice must include a statement to the effect that:
    - (c) the entity may, if dissatisfied with the decision, seek a reconsideration of the decision by the Secretary; and
    - (d) the entity may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Secretary upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.
- (2) The TCF (SIP) scheme must provide that, if:
  - (a) the Secretary confirms or varies a decision as mentioned in paragraph 22(1)(b); and
  - (b) gives to the entity written notice of the confirmation or variation of the decision; that notice must include a statement to the effect that the entity may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.
- (3) A failure to include a statement in a notice as mentioned in subsection (1) or (2) does not affect the validity of a decision.

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**24 Guarantees relating to payment of scheme debts connected with grants**

- (1) The TCF (SIP) scheme may provide that an entity ascertained in accordance with the scheme is not eligible for a grant unless another entity ascertained in accordance with the scheme gives a guarantee to the Commonwealth that any scheme debts owed by the first-mentioned entity will be paid.
- (2) The TCF (SIP) scheme may provide that an entity ascertained in accordance with the scheme is not entitled to request an advance on account of a grant unless another entity ascertained in accordance with the scheme gives a guarantee to the Commonwealth that any scheme debts owed by the first-mentioned entity will be paid.

**25 Guarantees relating to payment of scheme debts connected with loans**

The TCF (SIP) scheme may provide that an entity ascertained in accordance with the scheme is not entitled to apply for a loan unless another entity ascertained in accordance with the scheme gives a guarantee to the Commonwealth that any scheme debts owed by the first-mentioned entity will be paid.

**26 Non-arm's length transactions**

The TCF (SIP) scheme may provide that, if an entity incurs expenditure under a transaction that is not at arm's length, the amount of that expenditure is taken to be the amount that would reasonably have been expected to be incurred if the parties had been dealing with each other at arm's length.

**27 Participation in accredited benchmarking/management-improvement studies**

The TCF (SIP) scheme may provide that an entity is not eligible for any of the following grants:

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- (a) grants in respect of new TCF plant/building expenditure;
- (b) grants in respect of TCF research and development expenditure;
- (c) grants in respect of TCF value-adding;  
unless the entity has complied with such requirements as are imposed by the scheme in relation to participation in a study that, under the scheme, is taken to be:
  - (d) an accredited benchmarking study; or
  - (e) an accredited management-improvement study.

## **28 Grant by way of bounty**

This Act does not prevent a grant from being a grant by way of bounty.

## **29 Grants and advances to be inalienable**

The TCF (SIP) scheme may provide for grants, and advances on account of grants, to be absolutely inalienable (whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise) except with the approval of the Secretary.

## **30 Miscellaneous matters**

The TCF (SIP) scheme may make provision for and in relation to the following matters:

- (a) the times within which claims for grants are to be lodged;
- (b) requiring that a claim made by an entity ascertained in accordance with the scheme be accompanied by an audited statement relating to specified activities;
- (c) requiring that a claim made by an entity ascertained in accordance with the scheme be accompanied by an unaudited statement relating to specified activities;
- (d) requiring that a claim be accompanied by such a fee as is ascertained in accordance with the scheme;

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- (e) requiring that an application for a loan be accompanied by such a fee as is ascertained in accordance with the scheme;
- (f) the apportionment of expenditure;
- (g) the adjustment of eligibility for grants in relation to the transfer of the whole or a part of a business, including (but not limited to):
  - (i) treating the transferee as if the transferee had incurred particular expenditure, had derived particular revenue and had done particular acts or things; and
  - (ii) treating the transferor as if the transferor had not incurred particular expenditure, had not derived particular revenue and had not done particular acts or things;
- (h) the times when grants become payable;
- (i) specifying different categories of eligible expenditure for the purposes of working out eligibility for different types of grants.

### **31 Ancillary or incidental provisions**

The TCF (SIP) scheme may contain such ancillary or incidental provisions as the Minister considers appropriate.

### **32 Scheme-making power not limited**

Sections 9 to 31 (inclusive) do not, by implication, limit section 8.

### **33 Fee must not amount to taxation**

The amount of a fee under the TCF (SIP) scheme must not be such as to amount to taxation.

### **34 Variation of scheme**

- (1) The TCF (SIP) scheme may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
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- (2) Subsection (1) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.
- (3) To avoid doubt, the TCF (SIP) scheme may be varied after the end of the period of 14 days beginning on the day on which this Act receives the Royal Assent.

### **35 Scheme to be a disallowable instrument**

An instrument under section 8 is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **36 Appropriation**

- (1) Grants, and advances on account of grants, are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (2) Loans are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

## Part 3—Supplementation of the Regional Assistance Program

### 37 Supplementation of the Regional Assistance Program

- (1) The object of this section is to allow the diversion to the Regional Assistance Program of a portion of the \$700 million that is available for the TCF (SIP) scheme.

Note: See also section 9.

- (2) Before 1 July 2005, the Minister may, by writing, determine that a specified amount is appropriated from the Consolidated Revenue Fund for the purposes of the Regional Assistance Program.
- (3) A determination under subsection (2) has effect accordingly.
- (4) The Minister must cause a copy of a determination under subsection (2) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the determination was made.
- (5) In this section:

***Regional Assistance Program*** means the program administered by the Commonwealth and known as the Regional Assistance Program.

## **Part 4—Information-gathering powers**

### **38 Minister or Secretary may obtain information and documents**

- (1) This section applies to a person if the Minister or the Secretary has reason to believe that the person:
  - (a) has information or a document that is relevant to the operation of the TCF (SIP) scheme; or
  - (b) is capable of giving evidence which the Minister or the Secretary has reason to believe is relevant to the operation of the TCF (SIP) scheme.
- (2) The Minister or the Secretary may, by written notice given to the person, require the person:
  - (a) to give to the Minister or the Secretary, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the Minister or the Secretary, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the Minister or the Secretary, within the period and in the manner specified in the notice, those copies; or
  - (d) if the person is an individual—to appear before the Minister or the Secretary at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
  - (e) if the person is a body corporate—to cause a competent officer of the body to appear before the Minister or the Secretary at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.
- (3) A person is guilty of an offence if:

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- (a) the person is subject to a requirement under subsection (2);  
and
- (b) the person contravenes the requirement.

Penalty: 20 penalty units.

- (4) A notice under subsection (2) must set out the effect of the following provisions:
  - (a) subsection (3);
  - (b) section 49;
  - (c) section 50;
  - (d) section 51.

**39 Copying documents—reasonable compensation**

A person is entitled to be paid reasonable compensation for complying with a requirement covered by paragraph 38(2)(c).

**40 Self-incrimination**

- (1) An individual is not excused from giving information or evidence or producing a document or a copy of a document under this Part on the ground that the information or evidence or the production of the document or copy might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
  - (a) giving the information or evidence or producing the document or copy; or
  - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence or producing the document or copy;is not admissible in evidence against the individual in criminal proceedings other than:
  - (c) proceedings for an offence against subsection 38(3) or section 50 or 51; or



- (d) proceedings for an offence against section 49 that relates to this Part.

#### **41 Copies of documents**

- (1) The Minister or the Secretary may inspect a document or copy produced under this Part and may make and retain copies of, or take and retain extracts from, such a document.
- (2) The Minister or the Secretary may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 38(2)(c).

#### **42 Minister or Secretary may retain documents**

- (1) The Minister or the Secretary may take, and retain for as long as is necessary, possession of a document produced under this Part.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Minister or the Secretary to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Minister or the Secretary must, at such times and places as the Minister or the Secretary thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

## **Part 5—Recovery of scheme debts**

### **43 Repayments of conditional grants**

If:

- (a) a grant is paid to an entity; and
- (b) the grant is paid subject to a condition (whether a condition precedent or a condition subsequent); and
- (c) the condition was not fulfilled;

the entity is liable to repay to the Commonwealth:

- (d) the whole of the grant; or
- (e) if, under the TCF (SIP) scheme, a part of the grant ascertained in accordance with the scheme is taken to be subject to this section—that part of the grant.

### **44 Scheme debts are debts due to the Commonwealth**

A scheme debt is a debt due to the Commonwealth.

### **45 Recovery by legal proceedings**

A scheme debt may be recovered by the Commonwealth by action in a court of competent jurisdiction.

### **46 Recovery by set-off**

If an entity is liable to pay a scheme debt, the scheme debt may be deducted from one or more grants that are payable to the entity, and if the scheme debt is so deducted, the grant is taken to have been paid in full to the entity.

**47 Commonwealth may collect money from a person who owes money to an entity***What this section does*

- (1) This section allows the Commonwealth to collect money from a person who owes money to an entity that has a scheme debt.

*The Secretary may give direction*

- (2) The Secretary may direct a person (the **third party**) who owes, or may later owe, money (the **available money**) to the entity to pay some or all of the available money to the Commonwealth in accordance with the direction. The Secretary must give a copy of the direction to the entity.

*Limit on directions*

- (3) The direction cannot require an amount to be paid to the Commonwealth at a time before it becomes owing by the third party to the entity.

*Third party to comply*

- (4) The third party must comply with the direction, so far as the third party is able to do so.

Penalty: 20 penalty units.

*Court orders*

- (5) If a person is convicted of an offence in relation to a refusal or failure of the third party to comply with subsection (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Commonwealth an amount up to the amount involved in the refusal or failure of the third party.

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### *Indemnity*

- (6) Any payment made by the third party under this section is taken to have been made with the authority of the entity and of all other persons concerned, and the third party is indemnified for the payment.

### *Notice*

- (7) If the whole of the scheme debt of the entity is discharged before any payment is made by the third party, the Secretary must immediately give notice to the third party of that fact.

### *When third party is taken to owe money*

- (8) The third party is taken to owe money to the entity if:
- (a) money is due or accruing by the third party to the entity; or
  - (b) the third party holds money for or on account of the entity; or
  - (c) the third party holds money on account of some other person for payment to the entity; or
  - (d) the third party has authority from some other person to pay money to the entity;
- whether or not the payment of the money to the entity is dependent on a pre-condition that has not been fulfilled.

### *Building societies—withdrawable shares*

- (9) For the purposes of this section, money that has been paid by a person to a building society for the issue of withdrawable shares in the capital of the society, but has not been repaid, is taken to be:
- (a) if the money is payable on demand—money due by the building society to the person; or
  - (b) if the money is repayable on demand—money that may become due by the building society to the person.

### *Definition*

- (10) In this section:
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***building society*** means a society registered or incorporated as a building society, co-operative housing society or other similar society under the law in force in a State or Territory.

## Part 6—Offences

### 48 Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

### 49 False or misleading information

A person is guilty of an offence if:

- (a) the person gives information to another person; and
- (b) the person does so knowing that the information is false or misleading in a material particular; and
- (c) either of the following subparagraphs applies:
  - (i) the information is given to a person who is exercising powers or performing functions under, or in connection with, the TCF (SIP) scheme;
  - (ii) the information is given in compliance or purported compliance with section 38.

Penalty: Imprisonment for 12 months.

### 50 False or misleading evidence

A person is guilty of an offence if:

- (a) the person gives evidence to another person; and
- (b) the person does so knowing that the evidence is false or misleading in a material particular; and
- (c) the evidence is given under section 38.

Penalty: Imprisonment for 12 months.

**51 False or misleading documents**

- (1) A person is guilty of an offence if:
- (a) the person produces a document to another person; and
  - (b) the person does so knowing that the document is false or misleading in a material particular; and
  - (c) the document is produced in compliance or purported compliance with section 38.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

## Part 7—Miscellaneous

### 52 Delegation

#### *Delegation to senior officers of the Department*

- (1) The Secretary may, by writing, delegate to one or more senior officers of the Department any or all of the Secretary's functions or powers under this Act or the TCF (SIP) scheme.
- (2) A delegate is, in the performance of a function delegated under subsection (1), or in the exercise of a power delegated under subsection (1), subject to the directions of the Secretary.

#### *Delegation to senior employees of an authorised Commonwealth contractor*

- (3) The Secretary may, by writing, delegate to one or more senior employees of an authorised Commonwealth contractor any or all of the Secretary's functions or powers under the TCF (SIP) scheme, other than the function referred to in paragraph 22(1)(b) (which deals with the reconsideration of decisions).
- (4) A delegate is, in the performance of a function delegated under subsection (3), or in the exercise of a power delegated under subsection (3), subject to the directions of the Secretary.

#### *Section 70 of the Crimes Act 1914*

- (5) For the purposes of the application of the definition of **Commonwealth officer** in subsection 3(1) of the *Crimes Act 1914* to section 70 of that Act, a person who performs functions, or exercises powers, under a delegation under this section is taken to be a person who performs services for the Commonwealth.



*Definitions*

(6) In this section:

***authorised Commonwealth contractor*** means a person who:

- (a) provides, or proposes to provide, services to the Commonwealth under a contract; and
- (b) is authorised, in writing, by the Secretary for the purposes of this definition.

***senior employee***, in relation to an authorised Commonwealth contractor, means an employee of the contractor, where the skills and responsibilities that are expected of the employee are equivalent to, or exceed, the skills and responsibilities expected of at least one of the senior officers of the Department.

***senior officer***, in relation to the Department, means:

- (a) a person who holds or performs the duties of a Senior Executive Service office or position in the Department; or
- (b) a person who holds or performs the duties of an Executive Officer (Level 2) office or position in the Department.

**53 Availability of grants**

To avoid doubt, nothing in this Act implies that grants must be available in respect of a particular income year.

**54 Uniformity of bounties**

- (1) A function or power conferred on the Minister by this Act must not be performed or exercised in such a manner that any bounty under the TCF (SIP) scheme would not be uniform throughout the Commonwealth within the meaning of paragraph 51(iii) of the Constitution.
- (2) A function or power conferred on the Minister or the Secretary by the TCF (SIP) scheme must not be performed or exercised in such a manner that any bounty under the scheme would not be uniform

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throughout the Commonwealth within the meaning of paragraph 51(iii) of the Constitution.

### 55 International obligations

- (1) In performing a function, or exercising a power, conferred by this Act, the Minister must have regard to Australia's obligations under:
  - (a) the Agreement Establishing the World Trade Organization; and
  - (b) the Australia New Zealand Closer Economic Relations Trade Agreement; and
  - (c) an international agreement specified in the regulations.
- (2) Subsection (1) does not limit the matters to which the Minister may have regard.
- (3) In performing a function, or exercising a power, conferred by the TCF (SIP) scheme, the Minister or the Secretary must have regard to Australia's obligations under:
  - (a) the Agreement Establishing the World Trade Organization; and
  - (b) the Australia New Zealand Closer Economic Relations Trade Agreement; and
  - (c) an international agreement specified in the regulations.
- (4) Subsection (3) does not limit the matters to which the Minister or the Secretary may have regard.
- (5) In this section:

***Australia New Zealand Closer Economic Relations Trade Agreement*** includes:

- (a) a Protocol relating to that agreement; and
- (b) an instrument under that agreement or under such a Protocol.

***international agreement*** means:

- (a) a convention to which Australia is a party; or
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- (b) an agreement between Australia and a foreign country.

**56 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.

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*[Minister's second reading speech made in—  
House of Representatives on 11 February 1999  
Senate on 19 April 1999]*

(2/99)