



# **Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Act 2004**

**No. 146, 2004**

**An Act to amend the *Textile, Clothing and Footwear  
Strategic Investment Program Act 1999*, and for  
related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedule(s) .....	2

### **Schedule 1—Amendments** 3

<i>Textile, Clothing and Footwear Strategic Investment Program Act</i> <i>1999</i>	3
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**No. 146, 2004**

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**An Act to amend the *Textile, Clothing and Footwear Strategic Investment Program Act 1999*, and for related purposes**

*[Assented to 14 December 2004]*

**The Parliament of Australia enacts:**

## **1 Short title**

This Act may be cited as the *Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Act 2004*.

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*Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme)*

*Act 2004    No. 146, 2004    1*

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	14 December 2004
2. Schedule 1	Immediately after the commencement of the <i>Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Act 2004</i> .	14 December 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

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

#### **1 Section 3**

Repeal the section, substitute:

#### **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.
- There are 2 schemes under the program.
- The TCF (SIP) scheme provides for 5 grants in respect of expenditure incurred in the 2000-2001 to 2004-2005 income years. The scheme also provides for the making of some of those grants in respect of expenditure incurred in the 1998-1999 or 1999-2000 income year. The scheme also covers loans. Part 2 deals with this scheme.
- The TCF Post-2005 (SIP) scheme will provide for 2 grants in respect of expenditure incurred in the 2005-2006 to 2014-2015 income years. The scheme will not cover loans. Part 3A deals with this scheme.
- This Act also provides funding for the purposes of the Regional Assistance Program (see Part 3) and the TCF Small Business Program (see Part 3B).

#### **2 Section 4 (definition of *claim*)**

Repeal the definition.

#### **3 Section 4 (definition of *grant*)**

Repeal the definition.

**4 Section 4**

Insert:

*occupier*, in relation to premises, includes a person present at the premises who apparently represents the occupier.

**5 Section 4 (paragraph (a) of the definition of *scheme debt*)**

After “grant”, insert “under a scheme under Part 2 or 3A”.

**6 Section 4 (paragraph (c) of the definition of *scheme debt*)**

After “subsection 20(2)”, insert “or 37V(2)”.

**7 Section 4 (paragraph (d) of the definition of *scheme debt*)**

Omit “repayable”, substitute “recoverable”.

**8 Section 4**

Insert:

*TCF Post-2005 (SIP) scheme* means the scheme in force under section 37C.

**9 Before Division 1 of Part 2**

Insert:

**Division 1A—Preliminary**

**7A Simplified outline**

The following is a simplified outline of this Part:

- The TCF (SIP) scheme provides for the making of grants and 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 (see section 37).
- The TCF (SIP) scheme provides for 5 types of grants:

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| <ul style="list-style-type: none"> <li>(a) grants in respect of new TCF plant/building expenditure; and</li> <li>(b) grants in respect of TCF research and development expenditure; and</li> <li>(c) grants in respect of TCF value-adding; and</li> <li>(d) special grants in respect of second-hand TCF plant expenditure; and</li> <li>(e) special miscellaneous grants in respect of TCF-dependent communities.</li> </ul> <ul style="list-style-type: none"> <li>• The TCF (SIP) scheme provides for the making of those grants in respect of expenditure incurred in the 2000-2001 to 2004-2005 income years. It also provides that grants in respect of new TCF plant or buildings may be made for expenditure incurred in the 1998-1999 or 1999-2000 income year and special grants may be made for expenditure incurred in the 1999-2000 income year.</li> <li>• Grants under the TCF (SIP) scheme are to be made in arrears.</li> <li>• 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.</li> </ul> |
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## 7B Definitions

In this Part:

***authorised officer*** means a person appointed under subsection 18A(6) as an authorised officer of the Department.

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

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

## 10 After Division 4 of Part 2

Insert:

## Division 4A—Conditional grants

### 18A Conditional grants

- (1) The TCF (SIP) scheme may make provision for and in relation to the payment of grants subject to conditions (whether conditions precedent or conditions subsequent).

Note: Section 43 deals with the recovery of a conditional grant if there has been a breach of a condition.

*Condition—compliance with information gathering notice*

- (2) A grant paid to an entity is subject to the condition that the entity comply with any notice given to the entity under section 38.

Note: Section 43 deals with the recovery of a conditional grant if there has been a breach of a condition.

*Condition—no false or misleading statements*

- (3) A grant paid to an entity is subject to the condition that:
- (a) a false or misleading statement has not been made by, or on behalf of, the entity in connection with a claim for the grant; and
  - (b) false or misleading information or evidence is not given by, or on behalf of, the entity in compliance or purported compliance with section 38; and
  - (c) a false or misleading document is not produced by, or on behalf of, the entity in compliance or purported compliance with section 38.

Note: Section 43 deals with the recovery of a conditional grant if there has been a breach of a condition.

*Condition—entry to premises etc. to monitor compliance with other conditions*

- (4) A grant paid to an entity is subject to the condition that in relation to the following premises:
- (a) business premises specified in the notice that is given to the entity notifying the entity that the entity is entitled to be paid the grant;
  - (b) business premises specified in a later notice given to the entity by the Secretary under subsection (5);

the entity:

- (c) allow authorised officers of the Department, and any authorised employees of an authorised Commonwealth contractor accompanying those officers, access to the premises at any reasonable time of a business day for the purpose of monitoring compliance with other conditions that the grant is subject to; and
- (d) allow authorised officers of the Department during that access to inspect and search the premises and any thing on the premises for the purpose of that monitoring; and
- (e) allow authorised officers of the Department to operate electronic equipment at the premises to see whether documents in electronic form relevant to that monitoring are accessible by doing so; and

Note: See also sections 18B to 18E (which contain provisions relating to the operation of electronic equipment at the premises).

- (f) allow authorised officers of the Department to make copies of any documents in hard copy form found on the premises that are relevant to that monitoring; and
- (g) provide authorised officers of the Department with all reasonable facilities and assistance in connection with that monitoring.

Note: Section 43 deals with the recovery of a conditional grant if there has been a breach of a condition.

#### *Secretary's powers*

- (5) The Secretary may, by written notice given to an entity, specify business premises for the purposes of paragraph (4)(b).
- (6) The Secretary may, by writing, appoint an APS employee in the Department to be an authorised officer of the Department for the purposes of this Division. The Secretary may do so only if the Secretary is satisfied that the employee has suitable qualifications for such an appointment.
- (7) The Secretary may, by writing, appoint an employee of an authorised Commonwealth contractor to be an authorised employee of the contractor for the purposes of this Division. The Secretary may do so only if the Secretary is satisfied that the employee has suitable qualifications for such an appointment.

*Definitions*

- (8) In this section:

***authorised Commonwealth contractor*** has the same meaning as in section 52.

***business day*** means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

**18B Operation of electronic equipment by authorised officers**

- (1) If:

- (a) an authorised officer has obtained access to premises for the purpose of monitoring compliance with the conditions of a grant; and
- (b) the officer finds that documents in electronic form, relevant to that monitoring, are accessible by operating electronic equipment at the premises;

the officer may do only 1 of 2 things.

*Removal of documents*

- (2) One thing the officer may do is operate the equipment or other facilities at the premises to put the documents in hard copy form and remove the documents so produced.

*Removal of disk, tape or other storage device*

- (3) The other thing the officer may do is operate the equipment or other facilities at the premises to transfer the documents to a disk, tape or other storage device that:
- (a) is brought to the premises for the exercise of the power; or
  - (b) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;
- and remove the disk, tape or other storage device from the premises.

**18C Operation of electronic equipment by experts**

- (1) This section applies if:
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- (a) an authorised officer has obtained access to premises for the purpose of monitoring compliance with the conditions of a grant; and
  - (b) the officer believes on reasonable grounds that:
    - (i) documents in electronic form, relevant to that monitoring, may be accessible by operating electronic equipment at the premises; and
    - (ii) expert assistance is required to operate the equipment; and
    - (iii) an authorised employee (the *expert*) of an authorised Commonwealth contractor accompanying the officer in relation to that monitoring has the expertise to operate the equipment.

*Expert may operate equipment*

- (2) The expert may operate the equipment to determine whether such documents are accessible. If they are, the expert may do only 1 of 2 things.

*Produce documents in hard copy form*

- (3) One thing the expert may do is operate the equipment or other facilities at the premises to put the documents in hard copy form.

*Transfer documents to a disk, tape or other storage device*

- (4) The other thing the expert may do is operate the equipment or other facilities at the premises to transfer the documents to a disk, tape or other storage device that:
  - (a) is brought to the premises for the exercise of the power; or
  - (b) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises.

*Removal*

- (5) The authorised officer may then remove the documents in hard copy form or remove the disk, tape or other storage device.

*Section 70 of the Crimes Act 1914*

- (6) 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, an authorised employee of an authorised Commonwealth contractor who exercises a power referred to in this section is taken to be a person who performs services for the Commonwealth.

#### **18D Pre-condition to operating electronic equipment**

A person may operate electronic equipment at premises as mentioned in this Division only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

#### **18E Compensation for damage to electronic equipment**

- (1) This section applies if:
    - (a) as a result of electronic equipment being operated as mentioned in section 18A, 18B or 18C:
      - (i) damage is caused to the equipment; or
      - (ii) the data recorded on the equipment is damaged; or
      - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
    - (b) the damage or corruption occurs because:
      - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
      - (ii) insufficient care was exercised by the person operating the equipment.
  - (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
  - (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
  - (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
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(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1):

*damage*, in relation to data, includes damage by erasure of data or addition of other data.

## **18F Identity cards**

(1) The Secretary must issue an identity card to an authorised officer.

### *Form of identity card*

(2) The identity card must:

- (a) be in the form prescribed by the regulations; and
- (b) contain a recent photograph of the authorised officer.

### *Offence*

(3) A person commits an offence if:

- (a) the person has been issued with an identity card; and
- (b) the person ceases to be an authorised officer; and
- (c) the person does not return the identity card to the Secretary as soon as practicable.

Penalty: 1 penalty unit.

(4) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### *Card lost or destroyed*

(5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

### *Authorised officer must carry card*

(6) An authorised officer must carry his or her identity card at all times when exercising powers as an authorised officer.

*Authorised officer must produce card on request*

- (7) An authorised officer is not entitled to exercise any powers referred to in this Division in relation to premises if:
- (a) the occupier of the premises has requested the officer to produce the officer's identity card for inspection by the occupier; and
  - (b) the officer fails to comply with the request.

## **11 Application—conditional grants**

The amendment made by item 10 applies in relation to grants paid on or after the commencement of this item.

## **12 After Part 3**

Insert:

# **Part 3A—TCF Post-2005 (SIP) scheme**

## **Division 1—Preliminary**

### **37A Object of Part and simplified outline of Part**

*Object*

- (1) The object of this Part is to foster the development of a sustainable and internationally competitive TCF manufacturing industry and TCF design industry in Australia by providing incentives which will promote investment and innovation.

*Simplified outline*

- (2) The following is a simplified outline of this Part:

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| <ul style="list-style-type: none"><li>• The Minister must formulate a scheme (the <b><i>TCF Post-2005 (SIP) scheme</i></b>) for the making of grants in connection with the design and manufacture, in Australia, of eligible TCF products.</li><li>• The total of the grants paid under the TCF Post-2005 (SIP) scheme must not exceed \$575 million.</li></ul> |
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| <ul style="list-style-type: none"> <li>• The TCF Post-2005 (SIP) scheme will provide for 2 types of grants:           <ul style="list-style-type: none"> <li>(a) grants in respect of TCF capital investment expenditure on new TCF plant or buildings, brand support for TCF products or non-production related information technology; and</li> <li>(b) grants in respect of TCF research and development expenditure.</li> </ul> </li> <li>• The TCF Post-2005 (SIP) scheme will provide for the making of those grants in respect of expenditure incurred in the 2005-2006 to 2014-2015 income years.</li> </ul> |
| <ul style="list-style-type: none"> <li>• Grants under the TCF Post-2005 (SIP) scheme are to be made in arrears.</li> <li>• Entities who wish to obtain grants under the TCF Post-2005 (SIP) scheme will be required to register under the scheme and to submit strategic business plans and accounts.</li> </ul>   |

### 37B Definitions

In this Part:

***authorised officer*** means a person appointed under subsection 37P(6) as an authorised officer of the Department.

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

***clothing/finished textile expenditure*** means expenditure in connection with, or incidental to, the manufacture in Australia, or the design in Australia, of products that, under the TCF Post-2005 (SIP) scheme, are taken to be:

- (a) clothing products; or
- (b) finished textile products.

***grant*** means a grant under the TCF Post-2005 (SIP) scheme.

***leather/technical textile expenditure*** means expenditure in connection with, or incidental to, the manufacture in Australia, or

the design in Australia, of products that, under the TCF Post-2005 (SIP) scheme, are taken to be:

- (a) leather products; or
- (b) technical textile products.

## **Division 2—Formulation of TCF Post-2005 (SIP) scheme**

### **37C TCF Post-2005 (SIP) scheme**

The Minister must, by writing, formulate a scheme (the *TCF Post-2005 (SIP) scheme*) for the making of grants in connection with, or incidental to, 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.

### **37D Caps**

#### *Total cap*

- (1) The TCF Post-2005 (SIP) scheme must make provision for ensuring that the total of the grants (including advances on account of grants) paid under the scheme does not exceed \$575,000,000.

Note: Section 37V deals with advances on account of grants.

*Cap for 2005-2006 to 2009-2010 income years*

- (2) The scheme must also make provision for ensuring that the total of the grants (including advances on account of grants) paid under the scheme in respect of expenditure incurred in the 2005-2006 to 2009-2010 income years does not exceed \$487,500,000.

*Cap for 2010-2011 to 2014-2015 income years*

- (3) The scheme must also make provision for ensuring that the total of the grants (including advances on account of grants) paid under the scheme in respect of expenditure incurred in the 2010-2011 to 2014-2015 income years does not exceed \$87,500,000.

**Division 3—General policy objectives****37E General policy objectives**

The TCF Post-2005 (SIP) scheme must be directed towards ensuring the achievement of the policy objectives set out in this Division.

**37F 2 types of grants**

It is a policy objective for the TCF Post-2005 (SIP) scheme that there are to be 2 types of grants, as follows:

- (a) the first type of grants are to be known as ***grants in respect of TCF capital investment expenditure***;
- (b) the second type of grants are to be known as ***grants in respect of TCF research and development expenditure***.

**37G Provisions relating to grants in respect of TCF capital investment expenditure**

- (1) It is a policy objective for the TCF Post-2005 (SIP) scheme that grants in respect of TCF capital investment expenditure are only to be made as set out in this section.

*New TCF plant/building expenditure*

- (2) The grants are to be made in respect of expenditure that:

- (a) under the scheme, is taken to be new TCF plant/building expenditure; and
- (b) is incurred by an entity during any of the 2005-2006 to 2014-2015 income years of the entity; and
- (c) if the expenditure is incurred by the entity during any of the 2010-2011 to 2014-2015 income years of the entity—is also clothing/finished textile expenditure.

Note: For *clothing/finished textile expenditure*, see section 37B.

- (3) It is a policy objective for the scheme that expenditure is only to be taken to be new TCF plant/building expenditure under the scheme if the expenditure is of the kind for which, at the commencement of this Part, a Type 1 grant could be made under the TCF (SIP) scheme.

*Brand support for TCF products expenditure*

- (4) The grants are to be made in respect of expenditure that:
  - (a) under the scheme, is taken to be brand support for TCF products expenditure; and
  - (b) is incurred by an entity during any of the 2005-2006 to 2014-2015 income years of the entity; and
  - (c) if the expenditure is incurred by the entity during any of the 2010-2011 to 2014-2015 income years of the entity—is also clothing/finished textile expenditure.

Note: For *clothing/finished textile expenditure*, see section 37B.

*Non-production related information technology expenditure*

- (5) The grants are to be made in respect of expenditure that:
  - (a) under the scheme, is taken to be non-production related information technology expenditure; and
  - (b) is incurred by an entity during any of the 2005-2006 to 2014-2015 income years of the entity; and
  - (c) is also clothing/finished textile expenditure.

Note: For *clothing/finished textile expenditure*, see section 37B.

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### **37H Provisions relating to grants in respect of TCF research and development expenditure**

- (1) It is a policy objective for the TCF Post-2005 (SIP) scheme that grants in respect of TCF research and development expenditure are only to be made in respect of expenditure that:
- (a) under the scheme, is taken to be TCF research and development expenditure; and
  - (b) is incurred by an entity during any of the 2005-2006 to 2014-2015 income years of the entity; and
  - (c) if the expenditure is incurred by the entity during any of the 2010-2011 to 2014-2015 income years of the entity—is also clothing/finished textile expenditure.

Note: For *clothing/finished textile expenditure*, see section 37B.

- (2) It is a policy objective for the scheme that:
- (a) leather/technical textile expenditure is not to be taken, under the scheme, to be expenditure on TCF research and development; and
  - (b) expenditure in obtaining industrial property rights may be taken, under the scheme, to be expenditure on TCF research and development.

Note: For *leather/technical textile expenditure*, see section 37B.

### **37J Grants to be made in arrears**

It is a policy objective for the TCF Post-2005 (SIP) scheme that grants must not be made to an entity in respect of expenditure incurred by the entity during an income year of the entity unless the entity makes a claim after the end of the income year.

### **37K Grants cap based on eligible revenue and eligible start-up investment amount**

*Cap based on eligible revenue*

- (1) It is a policy objective for the TCF Post-2005 (SIP) scheme that there be a cap on the total of the grants that become payable to an entity during an income year (the *claim year*) of the entity in respect of 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.

- (2) The total of the grants 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 before the claim year, from sales of products that, under the scheme, are taken to be eligible TCF products.

*Cap based on eligible start-up investment amount*

- (3) It is a policy objective for the TCF Post-2005 (SIP) scheme that there be a cap on the total of the grants that become payable to an entity during an income year (the ***claim year***) of the entity and any income years of the entity that are earlier than the claim year in respect of expenditure incurred by the entity during a period that, under the scheme, is taken to be an eligible start-up period of the entity.
- (4) The total of the grants 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 is earlier than the claim year.

*When grant becomes payable*

- (5) 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 4—Registration for the purposes of the scheme**

### **37L Registration for the purposes of the scheme**

*Registration requirements*

- (1) The TCF Post-2005 (SIP) scheme may impose requirements relating to the registration of entities.
- (2) The requirements may include (but are not limited to) any or all of the following requirements:
  - (a) a requirement that an entity must apply for registration;

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- (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 specified information about the entity (which may include statistical information);
  - (d) a requirement that an entity's application for registration be accompanied by such a fee as is ascertained in accordance with the scheme.

*Consequences of non-compliance with registration requirements*

- (3) The scheme may provide for one or more of the following consequences for an entity that does not comply with a particular requirement relating to registration:
  - (a) the consequence that the entity is not eligible for a grant;
  - (b) the consequence that the entity's eligibility for a grant is subject to restriction or reduction;
  - (c) the consequence that the time of payment of a grant to the entity is deferred.

## **Division 5—Strategic business plans and accounts**

### **37M Strategic business plans**

The TCF Post-2005 (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.

### **37N Accounts**

The TCF Post-2005 (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:

- (a) the submission of audited accounts and audited financial statements; or

- (b) the submission of unaudited accounts and unaudited financial statements.

## Division 6—Conditional grants

### 37P Conditional grants

- (1) The TCF Post-2005 (SIP) scheme may make provision for and in relation to the payment of grants subject to conditions (whether conditions precedent or conditions subsequent).

Note: Section 43 deals with the recovery of a conditional grant if there has been a breach of a condition.

*Condition—compliance with information gathering notice*

- (2) A grant paid to an entity is subject to the condition that the entity comply with any notice given to the entity under section 38.

Note: Section 43 deals with the recovery of a conditional grant if there has been a breach of a condition.

*Condition—no false or misleading statements*

- (3) A grant paid to an entity is subject to the condition that:
  - (a) a false or misleading statement has not been made by, or on behalf of, the entity in connection with a claim for the grant; and
  - (b) false or misleading information or evidence is not given by, or on behalf of, the entity in compliance or purported compliance with section 38; and
  - (c) a false or misleading document is not produced by, or on behalf of, the entity in compliance or purported compliance with section 38.

Note: Section 43 deals with the recovery of a conditional grant if there has been a breach of a condition.

*Condition—entry to premises etc. to monitor compliance with other conditions*

- (4) A grant paid to an entity is subject to the condition that in relation to the following premises:

- (a) business premises specified in the notice that is given to the entity notifying the entity that the entity is entitled to be paid the grant;
- (b) business premises specified in a later notice given to the entity by the Secretary under subsection (5);

the entity:

- (c) allow authorised officers of the Department, and any authorised employees of an authorised Commonwealth contractor accompanying those officers, access to the premises at any reasonable time of a business day for the purpose of monitoring compliance with other conditions that the grant is subject to; and
- (d) allow authorised officers of the Department during that access to inspect and search the premises and any thing on the premises for the purpose of that monitoring; and
- (e) allow authorised officers of the Department to operate electronic equipment at the premises to see whether documents in electronic form relevant to that monitoring are accessible by doing so; and

Note: See also sections 37Q to 37T (which contain provisions relating to the operation of electronic equipment at the premises).

- (f) allow authorised officers of the Department to make copies of any documents in hard copy form found on the premises that are relevant to that monitoring; and
- (g) provide authorised officers of the Department with all reasonable facilities and assistance in connection with that monitoring.

Note: Section 43 deals with the recovery of a conditional grant if there has been a breach of a condition.

#### *Secretary's powers*

- (5) The Secretary may, by written notice given to an entity, specify business premises for the purposes of paragraph (4)(b).
- (6) The Secretary may, by writing, appoint an APS employee in the Department to be an authorised officer of the Department for the purposes of this Division. The Secretary may do so only if the Secretary is satisfied that the employee has suitable qualifications for such an appointment.

- (7) The Secretary may, by writing, appoint an employee of an authorised Commonwealth contractor to be an authorised employee of the contractor for the purposes of this Division. The Secretary may do so only if the Secretary is satisfied that the employee has suitable qualifications for such an appointment.

*Definitions*

- (8) In this section:

***authorised Commonwealth contractor*** has the same meaning as in section 52.

***business day*** means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

**37Q Operation of electronic equipment by authorised officers**

- (1) If:
- (a) an authorised officer has obtained access to premises for the purpose of monitoring compliance with the conditions of a grant; and
  - (b) the officer finds that documents in electronic form, relevant to that monitoring, are accessible by operating electronic equipment at the premises;
- the officer may do only 1 of 2 things.

*Removal of documents*

- (2) One thing the officer may do is operate the equipment or other facilities at the premises to put the documents in hard copy form and remove the documents so produced.

*Removal of disk, tape or other storage device*

- (3) The other thing the officer may do is operate the equipment or other facilities at the premises to transfer the documents to a disk, tape or other storage device that:
- (a) is brought to the premises for the exercise of the power; or
  - (b) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;
- and remove the disk, tape or other storage device from the premises.
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### **37R Operation of electronic equipment by experts**

- (1) This section applies if:
  - (a) an authorised officer has obtained access to premises for the purpose of monitoring compliance with the conditions of a grant; and
  - (b) the officer believes on reasonable grounds that:
    - (i) documents in electronic form, relevant to that monitoring, may be accessible by operating electronic equipment at the premises; and
    - (ii) expert assistance is required to operate the equipment; and
    - (iii) an authorised employee (the *expert*) of an authorised Commonwealth contractor accompanying the officer in relation to that monitoring has the expertise to operate the equipment.

*Expert may operate equipment*

- (2) The expert may operate the equipment to determine whether such documents are accessible. If they are, the expert may do only 1 of 2 things.

*Produce documents in hard copy form*

- (3) One thing the expert may do is operate the equipment or other facilities at the premises to put the documents in hard copy form.

*Transfer documents to a disk, tape or other storage device*

- (4) The other thing the expert may do is operate the equipment or other facilities at the premises to transfer the documents to a disk, tape or other storage device that:
  - (a) is brought to the premises for the exercise of the power; or
  - (b) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises.

*Removal*

- (5) The authorised officer may then remove the documents in hard copy form or remove the disk, tape or other storage device.

*Section 70 of the Crimes Act 1914*

- (6) 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, an authorised employee of an authorised Commonwealth contractor who exercises a power referred to in this section is taken to be a person who performs services for the Commonwealth.

**37S Pre-condition to operating electronic equipment**

A person may operate electronic equipment at premises as mentioned in this Division only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

**37T Compensation for damage to electronic equipment**

- (1) This section applies if:
- (a) as a result of electronic equipment being operated as mentioned in section 37P, 37Q or 37R:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

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- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
  - (5) Compensation is payable out of money appropriated by the Parliament.
  - (6) For the purposes of subsection (1):  
*damage*, in relation to data, includes damage by erasure of data or addition of other data.

### **37U Identity cards**

- (1) The Secretary must issue an identity card to an authorised officer.

#### *Form of identity card*

- (2) The identity card must:
  - (a) be in the form prescribed by the regulations; and
  - (b) contain a recent photograph of the authorised officer.

#### *Offence*

- (3) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an authorised officer; and
  - (c) the person does not return the identity card to the Secretary as soon as practicable.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### *Card lost or destroyed*

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

*Authorised officer must carry card*

- (6) An authorised officer must carry his or her identity card at all times when exercising powers as an authorised officer.

*Authorised officer must produce card on request*

- (7) An authorised officer is not entitled to exercise any powers referred to in this Division in relation to premises if:
- (a) the occupier of the premises has requested the officer to produce the officer's identity card for inspection by the occupier; and
  - (b) the officer fails to comply with the request.

## **Division 7—Other matters relating to the scheme**

### **37V Advances on account of grants**

*Advances*

- (1) The TCF Post-2005 (SIP) scheme may provide for advances on account of grants that may become payable.

*Repayments*

- (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 exceeds the amount of the grant (if any);
- the entity is liable to pay to the Commonwealth the amount of the excess.

### **37W Scheme may confer administrative powers on the Secretary**

The TCF Post-2005 (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.

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**37X Reconsideration and review of decisions**

- (1) The TCF Post-2005 (SIP) scheme must contain provisions for and in relation to the review of decisions of the Secretary under the scheme that affect an entity.
- (2) The scheme must contain provisions under which:
  - (a) an entity who is affected by a decision (the *initial decision*) of the Secretary under the scheme may, if dissatisfied with the decision, request the Secretary to reconsider the decision; and
  - (b) the Secretary is required to reconsider the initial decision and to confirm, revoke or vary the decision; and
  - (c) an application may be made to the Administrative Appeals Tribunal for review of an initial decision that has been confirmed or varied.
- (3) If the scheme provides that the Secretary is taken to have confirmed an initial decision after a specified period, the scheme must specify the prescribed time for making an application for review of the initial decision as so confirmed for the purposes of section 29 of the *Administrative Appeals Tribunal Act 1975*.

**37Y Guarantees relating to payment of scheme debts**

The TCF Post-2005 (SIP) scheme may provide that an entity (the *eligible entity*) ascertained in accordance with the scheme:

- (a) is not eligible for a grant; or
  - (b) 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 eligible entity will be paid.

**37Z Non-arm's length transactions**

The TCF Post-2005 (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.

**37ZA Grants and advances to be inalienable**

The TCF Post-2005 (SIP) scheme may provide for grants (including 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.

**37ZB Other matters**

The TCF Post-2005 (SIP) scheme may make provision for and in relation to the following matters:

- (a) the making of claims for grants;
- (b) the times within which claims for grants are to be made;
- (c) requiring that a claim made by an entity ascertained in accordance with the scheme be accompanied by an audited statement relating to specified activities;
- (d) requiring that a claim made by an entity ascertained in accordance with the scheme be accompanied by an unaudited statement relating to specified activities;
- (e) requiring that a claim be accompanied by such a fee as is ascertained in accordance with the scheme;
- (f) the assessment of claims;
- (g) the apportionment of expenditure;
- (h) 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;
- (i) the times when grants become payable.

**37ZC Ancillary or incidental provisions**

The TCF Post-2005 (SIP) scheme may contain such ancillary or incidental provisions as the Minister considers appropriate.

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**37ZD Scheme-making power not limited**

Sections 37D to 37ZC do not, by implication, limit section 37C.

**37ZE Fee must not amount to taxation**

The amount of a fee under the TCF Post-2005 (SIP) scheme must not be such as to amount to taxation.

**37ZF Variation of scheme**

- (1) The TCF Post-2005 (SIP) scheme may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) Subsection (1) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

**37ZG Scheme to be a disallowable instrument**

An instrument under section 37C is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**37ZH Appropriation**

Grants (including advances on account of grants) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

**37ZI Publication of grant totals**

As soon as practicable after the end of each of the 2006-2007 to 2015-2016 financial years, the Minister must publish the following information:

- (a) the name of each entity paid a grant (including an advance on account of a grant) during the financial year;
- (b) the total of the grants (including advances on account of grants) paid to the entity during the financial year.

## Part 3B—TCF Small Business Program

### 37ZJ TCF Small Business Program

- (1) The object of this section is to fund the TCF Small Business Program.
- (2) The Department is responsible for administering the program. This includes (but is not limited to) responsibility for determining the following:
  - (a) the recipients of payments (including the eligibility criteria);
  - (b) the amounts of payments;
  - (c) the timing of payments;
  - (d) the terms and conditions of payments.
- (3) The Consolidated Revenue Fund is appropriated for the purpose of payments under the program, to the extent of \$25,000,000.
- (4) In this section:

*TCF Small Business Program* means the program administered by the Commonwealth and known as the TCF Small Business Program.

### 13 Paragraph 38(1)(a)

After “TCF (SIP) scheme”, insert “or the TCF Post-2005 (SIP) scheme”.

### 14 At the end of paragraph 38(1)(b)

Add “or the TCF Post-2005 (SIP) scheme”.

### 15 Section 43

Repeal the section, substitute:

### 43 Recovery of conditional grants

If:

- (a) a grant under a scheme under Part 2 or 3A 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 is not fulfilled;
- the Commonwealth may recover from the entity the whole or a part of the grant.

**16 Section 46**

After “payable to the entity”, insert “under a scheme under Part 2 or 3A”.

**17 At the end of section 46**

Add:

Example: An entity has a scheme debt of \$500 in relation to a grant paid under the TCF (SIP) scheme. A grant of \$10,000 then becomes payable to the entity under the TCF Post-2005 (SIP) scheme. The \$500 scheme debt may be deducted from the \$10,000 grant.

**18 At the end of subparagraph 49(c)(i)**

Add “or the TCF Post-2005 (SIP) scheme”.

**19 At the end of subsection 52(1)**

Add “or the TCF Post-2005 (SIP) scheme”.

**20 After subsection 52(1)**

Insert:

- (1A) Subsection (1) does not apply in relation to the powers under subsections 18A(6) and (7) and 37P(6) and (7) (about authorising persons in relation to entry to premises).

**21 After subsection 52(3)**

Insert:

- (3A) 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 Post-2005 (SIP) scheme, other than the function referred to in paragraph 37X(2)(b) (which deals with the reconsideration of decisions).

**22 Subsection 52(4)**

After “subsection (3)” (wherever occurring), insert “or (3A)”.

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**23 Section 53**

After “grants”, insert “under a scheme under Part 2 or 3A”.

**24 Subsection 55(3)**

After “TCF (SIP) scheme”, insert “or the TCF Post-2005 (SIP) scheme”.

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*[Minister’s second reading speech made in—  
House of Representatives on 17 November 2004  
Senate on 7 December 2004]*

(173/04)

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