



Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Act 2010

No. 43, 2010

**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 ComLaw (<http://www.comlaw.gov.au/>)

Contents

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

Schedule 1—Textile, Clothing and Footwear Strategic Investment Program Act 1999

3



Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Act 2010

No. 43, 2010

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

[Assented to 14 April 2010]

The Parliament of Australia enacts:

Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Act 2010 No. 43, 2010 1

1 Short title

This Act may be cited as the *Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Act 2010*.

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Textile, Clothing and Footwear Strategic Investment Program Act 1999

1 Title

Omit “**Strategic Investment Program**”, substitute “**Investment and Innovation Programs**”.

2 Section 1

Omit “*Strategic Investment Program*”, substitute “*Investment and Innovation Programs*”.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

3 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 and Innovation Programs.
- There are 2 schemes under the programs.
- The TCF Post-2005 (SIP) scheme provides for 2 grants in respect of expenditure incurred in the 2005-2006 to 2009-2010 income years. Part 3A deals with this scheme.
- The Clothing and Household Textile (BIC) scheme provides for innovation grants in respect of expenditure incurred in the 2010-2011 to 2014-2015 income years. Part 3C deals with this scheme.

- This Act also provides funding for the purposes of the TCF Small Business Program (see Part 3B).

4 Section 4

Insert:

authorised Commonwealth contractor has the meaning given by section 52.

5 Section 4 (definition of *bounty*)

Repeal the definition.

6 Section 4

Insert:

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

7 Section 4

Insert:

Clothing and Household Textile (BIC) scheme (short for Clothing and Household Textile (Building Innovative Capability) scheme) has the meaning given by section 37ZM.

8 Section 4

Insert:

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 a TCF scheme, are taken to be:

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

9 Section 4 (definition of *loan*)

Repeal the definition.

10 Section 4 (definition of *scheme debt*)

Repeal the definition, substitute:

scheme debt means:

- (a) so much of an amount paid, or purportedly paid, to an entity by way of a grant under a TCF scheme as represents an overpayment; or
- (b) an amount that is payable as mentioned in subsection 37V(2) or 37ZZE(2) or (3) (advances); or
- (c) an amount that is recoverable as mentioned in section 43 (conditional grants).

11 Section 4

Insert:

TCF scheme (short for Textile, Clothing and Footwear scheme), means:

- (a) the TCF Post-2005 (SIP) scheme; or
- (b) the Clothing and Household Textile (BIC) scheme.

12 Section 4 (definition of *TCF (SIP) scheme*)

Repeal the definition, substitute:

TCF (SIP) scheme (short for Textile, Clothing and Footwear (Strategic Investment Program) scheme) means the scheme in force under section 8 immediately before the repeal of that section by the *Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Act 2010*.

13 Parts 2 and 3

Repeal the Parts.

14 Subsection 37A(2)

Omit:

- The total of the grants paid under the TCF Post-2005 (SIP) scheme must not exceed \$575 million.

substitute:

- The total of the grants paid under the TCF Post-2005 (SIP) scheme must not exceed \$487.5 million.

15 Subsection 37A(2)

Omit:

- 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.

substitute:

- The TCF Post-2005 (SIP) scheme will provide for the making of those grants in respect of expenditure incurred in the 2005-2006 to 2009-2010 income years.

16 Section 37B (definition of *clothing/finished textile expenditure*)

Repeal the definition.

17 Subsection 37D(1)

Omit “(1)”.

Note: The heading to subsection 37D(1) is deleted.

18 Subsection 37D(1)

Omit “\$575,000,000”, substitute “\$487,500,000”.

19 Subsections 37D(2) and (3)

Repeal the subsections.

20 Paragraphs 37G(2)(b) and (c)

Repeal the paragraphs, substitute:

- (b) is incurred by an entity during any of the 2005-2006 to 2009-2010 income years of the entity.

21 Subsection 37G(2) (note)

Repeal the note.

22 Paragraphs 37G(4)(b) and (c)

Repeal the paragraphs, substitute:

- (b) is incurred by an entity during any of the 2005-2006 to 2009-2010 income years of the entity.

23 Subsection 37G(4) (note)

Repeal the note.

24 Paragraph 37G(5)(b)

Omit “2014-2015”, substitute “2009-2010”.

25 Subsection 37G(5) (note)

Omit “section 37B”, substitute “section 4”.

26 Paragraphs 37H(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) is incurred by an entity during any of the 2005-2006 to 2009-2010 income years of the entity.

27 Subsection 37H(1) (note)

Repeal the note.

28 Subsection 37P(8)

Repeal the subsection.

29 After subsection 37X(2)

Insert:

- (2A) However, the scheme may contain provisions that specify decisions in relation to which the provisions mentioned in subsection (2) do not apply.

30 Section 37ZG

Omit all the words after “section 37C”, substitute “is a legislative instrument”.

Note: The heading to section 37ZG is altered by omitting “**disallowable**” and substituting “**legislative**”.

31 Section 37ZI

Omit “2015-2016”, substitute “2010-2011”.

32 After Part 3B

Insert:

Part 3C—Clothing and Household Textile (BIC) scheme

Division 1—Preliminary

37ZK Object of Part and simplified outline

Object

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

Simplified outline

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

- | |
|--|
| <ul style="list-style-type: none">• The Minister must formulate a scheme (the Clothing and Household Textile (BIC) scheme) for the making of grants in connection with the design and manufacture, in Australia, of eligible clothing and household textile products.• The total of the grants paid under the Clothing and Household Textile (BIC) scheme must not exceed \$112.5 million.• The Clothing and Household Textile (BIC) scheme will provide for innovation grants in respect of clothing/finished textile expenditure.• The Clothing and Household Textile (BIC) scheme will provide for the making of those grants in respect of expenditure incurred in the 2010-2011 to 2014-2015 income years.• Grants under the Clothing and Household Textile (BIC) scheme are to be made in arrears. |
|--|

- Entities that wish to obtain grants under the Clothing and Household Textile (BIC) scheme will be required to register under the scheme and to submit strategic business plans and accounts.

37ZL Definitions

In this Part:

authorised officer means a person appointed under subsection 37ZY(1) as an authorised officer of the Department.

innovation grant has the meaning given by section 37ZQ.

Division 2—Formulation of Clothing and Household Textile (BIC) scheme

37ZM Clothing and Household Textile (BIC) scheme

The Minister must, by legislative instrument, formulate a scheme (the ***Clothing and Household Textile (BIC) 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 clothing and household textile products;
- (b) the design in Australia, for manufacture in Australia, of products:
 - (i) that, under the scheme, are taken to be eligible clothing and household textile 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 to which both of the following apply, if the importation into Australia of some or all of the products is or will be covered by a designated industry program:
 - (i) products that, under the scheme, are taken to be eligible clothing and household textile products;
 - (ii) products, some or all of which are intended to be sold in Australia.

Note: *Clothing and Household Textile (BIC) scheme* is short for Clothing and Household Textile (Building Innovative Capability) scheme.

37ZMA Consultation

Before formulating the Clothing and Household Textile (BIC) scheme, the Minister must consult with industry about the products that are to be taken, under the scheme, to be eligible clothing and household textile products.

37ZN Caps

The Clothing and Household Textile (BIC) scheme must make provision for ensuring that the total of innovation grants (including advances on account of innovation grants) paid under the scheme does not exceed \$112,500,000.

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

37ZO Appropriation

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

Division 3—General policy objectives

37ZP General policy objectives

The Clothing and Household Textile (BIC) scheme must be directed towards ensuring the achievement of the policy objectives set out in this Division.

37ZQ Type of grants

It is a policy objective for the Clothing and Household Textile (BIC) scheme that there are to be grants (*innovation grants*) in respect of clothing/finished textile expenditure.

Note: For *clothing/finished textile expenditure*, see section 4.

37ZQA Commitment to Australian operations

It is a policy objective for the Clothing and Household Textile (BIC) scheme that entities that wish to obtain innovation grants under the scheme must be required to demonstrate a commitment to Australian-based manufacturing or Australian-based design for manufacture in Australia activities.

37ZQB Household textile products—manufacture using in-house fabrics

It is a policy objective for the Clothing and Household Textile (BIC) scheme that, for an activity of an entity that consists of the manufacture of household textile products to be taken to be an eligible clothing and household textile activity, such activity must result directly and predominantly in the manufacture of such products using fabric manufactured by the entity (in addition to complying with any other applicable requirements of scheme).

37ZR Provisions relating to innovation grants in respect of clothing/finished textile expenditure

- (1) It is a policy objective for the Clothing and Household Textile (BIC) scheme that innovation grants are only to be made as set out in this section.
- (2) Innovation grants are to be made in respect of expenditure that:
 - (a) under the scheme, is taken to be clothing/finished textile expenditure; and
 - (b) is incurred by an entity during any of the 2010-2011 to 2014-2015 income years of the entity.

Note: For *clothing/finished textile expenditure*, see section 4.

37ZS Grants to be made in arrears

It is a policy objective for the Clothing and Household Textile (BIC) scheme that an innovation grant 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 for the innovation grant after the end of the income year.

37ZT 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 Clothing and Household Textile (BIC) scheme that there be a cap on the total of the innovation 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 innovation 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 clothing and household textile products.

Cap based on eligible start-up investment amount

- (3) It is a policy objective for the Clothing and Household Textile (BIC) scheme that there be a cap on the total of the innovation 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 innovation 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, an innovation grant becomes payable to an entity when a determination is made under the scheme that the entity is entitled to be paid the innovation grant.

Division 4—Registration for the purposes of the scheme

37ZU Registration for the purposes of the scheme

Registration requirements

- (1) The Clothing and Household Textile (BIC) 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;
 - (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 an innovation grant;
 - (b) the consequence that the entity's eligibility for an innovation grant is subject to restriction or reduction;
 - (c) the consequence that the time of payment of an innovation grant to the entity is deferred.

Division 5—Strategic business plans and accounts

37ZV Strategic business plans

The Clothing and Household Textile (BIC) scheme must provide that an entity is not eligible for an innovation 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.

37ZW Accounts

The Clothing and Household Textile (BIC) scheme may provide that an entity ascertained in accordance with the scheme is not eligible for an innovation 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

37ZX Conditional grants

- (1) The Clothing and Household Textile (BIC) scheme may make provision for and in relation to the payment of innovation 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) An innovation 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) An innovation 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) An innovation grant paid to an entity is subject to the condition that in relation to the premises covered by subsection (5), the entity:
 - (a) allow authorised officers, 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 to which the innovation grant is subject; and
 - (b) allow authorised officers during that access to inspect and search the premises and any thing on the premises for the purpose of that monitoring; and
 - (c) allow authorised officers 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 37ZZ to 37ZZC (which contain provisions relating to the operation of electronic equipment at the premises).
- (d) allow authorised officers to make copies of any documents in hard copy form found on the premises that are relevant to that monitoring; and
 - (e) provide authorised officers with all reasonable facilities and assistance in connection with that monitoring.

Note 1: For *authorised officer*, see section 37ZL and subsection 37ZY(1).

Note 2: Section 43 deals with the recovery of a conditional grant if there has been a breach of a condition.

- (5) This subsection covers 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 innovation grant;

- (b) business premises specified in a later notice given to the entity by the Secretary under subsection (6).
- (6) The Secretary may, by written notice given to an entity, specify business premises for the purposes of paragraph (5)(b).

37ZY Appointment of authorised officers and authorised employees of Commonwealth contractors

- (1) 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 Part. The Secretary may do so only if the Secretary is satisfied that the employee has suitable qualifications for such an appointment.
- (2) 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 Part. The Secretary may do so only if the Secretary is satisfied that the employee has suitable qualifications for such an appointment.

Division 7—Monitoring of compliance

37ZZ Operation of electronic equipment by authorised officers

Scope

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

Note: For **authorised officer**, see section 37ZL and subsection 37ZY(1).

- (2) If this section applies, the authorised officer may do only 1 of 2 things, as set out in subsection (3) or (4).

Produce documents in hard copy form

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

Transfer to storage device

- (4) The other thing the officer may do is operate the equipment or other facilities at the premises to transfer the documents to a storage device (including a disk or tape) if:
- (a) the storage device is brought to the premises for the exercise of the power; or
 - (b) the storage device is at the premises, and its use 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 storage device.

37ZZA Operation of electronic equipment by experts

Scope

- (1) This section applies if:
- (a) an authorised officer has obtained access to premises for the purpose of monitoring compliance with the conditions of an innovation 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.

Note: For *authorised officer*, see section 37ZL and subsection 37ZY(1).

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, as set out in subsection (3) or (4).

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 to 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 storage device (including a disk or tape) if:
- (a) the storage device is brought to the premises for the exercise of the power; or
 - (b) the storage device is at the premises, and its use 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 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.

37ZZB 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.

37ZZC Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of equipment being operated as mentioned in section 37ZX, 37ZZ or 37ZZA:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) schemes 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 schemes, 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 or 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.

37ZZD 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 8—Other matters for which the scheme may provide

37ZZE Advances on account of grants

Advances

- (1) The Clothing and Household Textile (BIC) scheme may provide for advances on account of innovation 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;the entity is liable to pay to the Commonwealth the amount of the excess.
- (3) An entity is liable to pay to the Commonwealth the whole amount of an advance mentioned in paragraph (2)(a) if the entity does not receive the innovation grant on account of which the advance was given.

37ZZF Reconsideration and review of decisions

- (1) The Clothing and Household Textile (BIC) 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 that 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) However, the scheme may contain provisions that specify decisions in relation to which the provisions mentioned in subsection (2) do not apply.
- (4) 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*.

37ZZG Guarantees relating to payment of scheme debts

The Clothing and Household Textile (BIC) scheme may provide that an entity (the *eligible entity*) ascertained in accordance with the scheme:

- (a) is not eligible for an innovation grant; or
- (b) is not entitled to request an advance on account of an innovation 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.

37ZZH Non-arm's length transactions

The Clothing and Household Textile (BIC) 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.

37ZZI Grants and advances to be inalienable

The Clothing and Household Textile (BIC) scheme may provide for innovation grants (including advances on account of innovation 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.

37ZZJ Other matters

- (1) The Clothing and Household Textile (BIC) scheme may make provision for and in relation to the following matters:

- (a) the making of claims for innovation grants;
 - (b) the times within which claims for innovation grants are to be made;
 - (c) requiring that a claim for an innovation grant 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 for an innovation grant 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 for an innovation grant be accompanied by such a fee as is ascertained in accordance with the scheme;
 - (f) the assessment of claims for innovation grants;
 - (g) the apportionment of expenditure;
 - (h) the adjustment of eligibility for innovation 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 innovation grants become payable;
 - (j) matters of a transitional nature (including any saving or application provisions) arising out of the transition from the TCF Post-2005 (SIP) scheme to the Clothing and Household Textile (BIC) scheme.
- (2) Subsection (1) does not, by implication, limit section 37ZM (power to make Clothing and Household Textile (BIC) scheme).
- (3) The amount of a fee under the Clothing and Household Textile (BIC) scheme must not be such as to amount to taxation.

37ZZK Scheme may confer administrative powers on the Secretary

The Clothing and Household Textile (BIC) scheme may make provision with respect to a matter by conferring on the Secretary a power to make a decision of an administrative character.

37ZZL Ancillary or incidental provisions

The Clothing and Household Textile (BIC) scheme may contain such ancillary or incidental provisions as the Minister considers appropriate.

37ZZM Variation of scheme

- (1) The Clothing and Household Textile (BIC) 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.

Division 9—Publication of grant totals

37ZZN Publication of grant totals

As soon as practicable after the end of each of the 2011-2012 to 2015-2016 financial years, the Minister must publish the following information:

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

33 Paragraphs 38(1)(a) and (b)

Omit “the TCF (SIP) scheme or the TCF Post-2005 (SIP) scheme”, substitute “a TCF scheme”.

34 Paragraph 43(a)

Omit “a scheme under Part 2 or 3A”, substitute “a TCF scheme”.

35 Section 46

Repeal the section, substitute:

46 Recovery by set-off

- (1) If an entity is liable to pay a scheme debt, the Commonwealth may recover the scheme debt from the entity by deducting the amount of the scheme debt from either or both of the following:
 - (a) one or more amounts that are payable to the entity by way of an advance or advances on account of a grant or grants that may become payable to the entity;
 - (b) one or more grants that are payable to the entity under a TCF scheme.

- (2) If the scheme debt is deducted as mentioned in subsection (1), the amount covered by paragraph (1)(a) and the grant covered by paragraph (1)(b) are taken to have been paid in full to the entity.

Example: An entity has a scheme debt of \$1,000 in relation to a grant paid under the TCF Post-2005 (SIP) scheme. An advance of \$11,000 under the Clothing and Household Textile (BIC) scheme is payable to the entity. The \$1,000 scheme debt may be deducted from the advance, so that the entity only actually receives \$10,000. However, the entity is taken to have been paid an advance of \$11,000.

36 Subparagraph 49(c)(i)

Omit “the TCF (SIP) scheme or the TCF Post-2005 (SIP) scheme”, substitute “a TCF scheme”.

37 Subsection 52(1)

Omit “the TCF (SIP) scheme or the TCF Post-2005 (SIP) scheme”, substitute “a TCF scheme”.

38 Subsection 52(1A)

Omit all the words after “under”, substitute:

the following provisions:

- (a) subsections 37P(6) and (7);
- (b) section 37ZY.

Note: The provisions are about authorising persons in relation to entry to premises etc.

39 Subsection 52(3)

Repeal the subsection.

40 After subsection 52(3A)

Insert:

- (3B) The Secretary may, by writing, delegate to one or more senior employees of an authorised Commonwealth contractor any or all of the Secretary's function or powers under the Clothing and Household Textile (BIC) scheme, other than the function referred to in paragraph 37ZZF(2)(b) (reconsideration of decisions).

41 Subsection 52(4)

Omit "(3) or (3A)" (wherever occurring), substitute "(3A) or (3B)".

42 Section 53

Omit "scheme under Part 2 or 3A", substitute "TCF scheme".

43 Section 54

Repeal the section.

44 Subsection 55(3)

Omit "the TCF (SIP) scheme or the TCF Post-2005 (SIP) scheme", substitute "a TCF scheme".

45 After section 55

Insert:

55A Additional effect of Act

Without limiting its effect apart from this section, this Act also has the effect, and is taken always to have had the effect, it would have (or would have had) if each reference to an entity were, by express provision, confined to a reference to an entity that is:

- (a) a corporation to which paragraph 51(xx) of the Constitution applies; or
- (b) an entity that carries on business in a Territory;
- (c) an entity engaging in acts or practices in the course of, or in relation to, trade or commerce:
 - (i) between Australia and places outside Australia; or

- (ii) among the States; or
- (iii) within a Territory, between a State and a Territory or between 2 Territories.

46 Transitional provision—section 37X

- (1) This item applies if, immediately before the commencement of this Schedule, the TCF Post-2005 (SIP) scheme (the *scheme*) in force under section 37C of the *Textile, Clothing and Footwear Strategic Investment Program Act 1999* contains a provision that has the effect described in subsection 37X(2A) (as inserted by this Schedule).
- (2) At and after the commencement of this Schedule, the provision has effect for the purposes of the scheme.
- (3) To avoid doubt, the insertion of subsection 37X(2A) by this Schedule does not affect the validity of the scheme before the commencement of this Schedule.

47 Savings provision—repeal of Parts 2 and 3

The repeal of Parts 2 and 3 of the *Textile, Clothing and Footwear Strategic Investment Program Act 1999* by item 13 of this Schedule does not affect the operation of Parts 5 and 6 of that Act in respect of the TCF (SIP) scheme (as in force under section 8 of that Act immediately before the commencement of this Schedule).

[Minister's second reading speech made in—
House of Representatives on 25 November 2009
Senate on 24 February 2010]

(232/09)

Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Act 2010 No. 43, 2010 27