Textile, Clothing and Footwear Strategic Investment Program Act 1999

Act No. 182 of 1999 as amended

This compilation was prepared on 17 December 2004
taking into account amendments up to Act No. 146 of 2004

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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

Part 1—Introduction

1 Short title [see Note 1]

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

2 Commencement [see Note 1]

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.
- 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).

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.

designated industry program means a program or scheme that is:
  (a) administered by the Commonwealth; and
  (b) specified in the regulations.

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

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.

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

scheme debt means:
  (a) so much of an amount paid, or purportedly paid, to an entity by way of a grant under a scheme under Part 2 or 3A 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) or 37V(2) (which deals with advances); or
(d) an amount that is recoverable 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 Post-2005 (SIP) scheme means the scheme in force under section 37C.

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 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:
  
  (a) grants in respect of new TCF plant/building expenditure; and
  
  (b) grants in respect of TCF research and development expenditure; and
  
  (c) grants in respect of TCF value-adding; and
  
  (d) special grants in respect of second-hand TCF plant expenditure; and
  
  (e) special miscellaneous grants in respect of TCF-dependent communities.
• 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.

• 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.

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.

_text_ 

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Part 2  TCF (SIP) scheme
Division 1  General provisions

Section 8

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:

\[ \text{Regional Assistance Program} - \text{supplementation payments} \]

$700 million

where:

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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.
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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);
(da) section 14A (which provides an alternative cap for certain 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
      (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 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  

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(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.

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:

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(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.

14A Alternative cap for certain grants in respect of TCF value-adding

(1) This section sets out a policy objective for the TCF (SIP) Scheme that applies instead of the policy objective in section 14.

The objective

(2) The objective is that the total of the grants that are made to a section 14A entity in respect of activities that, under the scheme, are taken to be eligible activities carried on by the entity during the entity’s 2003-2004 income year or 2004-2005 income year must not exceed the sum of:

(a) 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

(b) 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

(c) 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.

Cap on grants to which the objective applies

(3) The TCF (SIP) Scheme must make provision for ensuring that the total of the grants paid in respect of TCF value-adding to section 14A entities in a financial year does not exceed, by more than $3,900,000, the total of the grants in respect of TCF value-adding that would have been made to those entities in the financial year if the policy objective in section 14 had applied instead of the policy objective in this section.

Section 14A entities

(4) In this section:

section 14A entity means an entity:

(a) that carries on, in Australia, the following leather and leather product manufacturing activities:
   (i) post full substance activities (including sammying, splitting, shaving, tanning, currying, dressing, dyeing, embossing or japanning leather, animal skins or fur);
   (ii) fur dressing and dyeing;
   (iii) hide and skin tanning, currying, dressing, crusting, dyeing or finishing;
   (iv) leather manufacturing;
   (v) leather tanning; or

(b) that manufactures, in Australia, eligible TCF products to which any of the following headings of Schedule 3 to the Customs Tariff Act 1995 apply:
   (i) heading 5601 of Chapter 56;
   (ii) heading 5602 of Chapter 56;
   (iii) heading 5603 of Chapter 56;
   (iv) heading 5911 of Chapter 59.
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.
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.
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Division 3  Registration for the purposes of the scheme

Section 16

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 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:
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(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.

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(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:
   (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.
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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.

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(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.

(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*.  

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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 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 accordance with the scheme, request the Secretary to reconsider the decision; and
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(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 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.

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:

(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;
(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;

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(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.

(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.

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(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.

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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:

- The Minister must formulate a scheme (the **TCF Post-2005 (SIP) scheme**) for the making of grants in connection with the design and manufacture, in Australia, of eligible TCF products.
- The total of the grants paid under the TCF Post-2005 (SIP) scheme must not exceed $575 million.
- The TCF Post-2005 (SIP) scheme will provide for 2 types of grants:
  - (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
  - (b) grants in respect of TCF research and development expenditure.
Part 3A  TCF Post-2005 (SIP) scheme
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- 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.
- Grants under the TCF Post-2005 (SIP) scheme are to be made in arrears.
- 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.

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

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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.
Part 3A  TCF Post-2005 (SIP) scheme
Division 3  General policy objectives

Section 37H

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.

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.

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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;
   (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:

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(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.

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(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;

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and remove the disk, tape or other storage device from the premises.

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.
Section 37S

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.
Section 37U

(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.

(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.

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:
Part 3A  TCF Post-2005 (SIP) scheme
Division 7  Other matters relating to the scheme

Section 37ZC

(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.

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.

52  Textile, Clothing and Footwear Strategic Investment Program Act 1999
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

Section 37ZJ

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.
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 the TCF Post-2005 (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 or the TCF Post-2005 (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:
   (a) the person is subject to a requirement under subsection (2); and
Part 4  Information-gathering powers

Section 39

(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 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.

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 under a scheme under Part 2 or 3A, and if the scheme debt is so deducted, the grant is taken to have been paid in full to the entity.

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.

58 Textile, Clothing and Footwear Strategic Investment Program Act 1999
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.

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

Textile, Clothing and Footwear Strategic Investment Program Act 1999

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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:

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 or the TCF Post-2005 (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
Part 6 Offences

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(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 or the TCF Post-2005 (SIP) scheme.

(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).

(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).

(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).

(4) A delegate is, in the performance of a function delegated under subsection (3) or (3A), or in the exercise of a power delegated under subsection (3) or (3A), subject to the directions of the Secretary.
Section 53

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) an SES employee, or acting SES employee, 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 under a scheme under Part 2 or 3A 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 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 or the TCF Post-2005 (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:

\[\text{Australia New Zealand Closer Economic Relations Trade Agreement}\]

includes:
   (a) a Protocol relating to that agreement; and

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(b) an instrument under that agreement or under such a Protocol.

*international agreement* means:
(a) a convention to which Australia is a party; or
(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.
Notes to the Textile, Clothing and Footwear Strategic Investment Program Act 1999

Note 1

The Textile, Clothing and Footwear Strategic Investment Program Act 1999 as shown in this compilation comprises Act No. 182, 1999 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

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Notes to the Textile, Clothing and Footwear Strategic Investment Program Act 1999

**Act Notes**

(a) The Textile, Clothing and Footwear Strategic Investment Program Act 1999 was amended by Schedule 1 (item 935) only of the Public Employment (Consequential and Transitional) Amendment Act 1999, subsections 2(1) to (3) of which provide as follows:

1. In this Act, commencing time means the time when the Public Service Act 1999 commences.
2. Subject to this section, this Act commences at the commencing time.
3. If:

   a. an item (the amending item) of a Schedule to this Act is expressed to amend another Act (the amended Act); and
   b. the whole of the amended Act is expressed to commence at one time; and
   c. at the time when the Public Service Act 1999 commences, the amended Act:
      i. has not yet been enacted; or
      ii. has been enacted but has not yet commenced;

   then the amending item commences immediately after the commencement of the amended Act.

(b) Subsection 2(1) (item 58) of the Statute Law Revision Act 2002 provides as follows:

1. Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<table>
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<th>Provision(s)</th>
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(c) Subsection 2(1) (item 2) of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Act 2004 provides as follows:

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.

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### Table of Amendments

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70  **Textile, Clothing and Footwear Strategic Investment Program Act 1999**
Table A

Application, saving or transitional provisions

Textile, Clothing and Footwear Strategic Investment Program Amendment Act 2004 (No. 36, 2004)

4 Application

The amendments made by Schedule 1 to this Act apply in respect of grants made both before and after the commencement of this Act.

Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Act 2004 (No. 146, 2004)

Schedule 1

11 Application—conditional grants

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