Textile, Clothing and Footwear Strategic Investment Program Scheme 1999

I, NICHOLAS HUGH MINCHIN, Minister for Industry, Science and Resources, formulate this Scheme under section 8 of the Textile, Clothing and Footwear Strategic Investment Program Act 1999.


[Signature]

Minister for Industry, Science and Resources
Textile, Clothing and Footwear Strategic Investment Program Scheme 1999

made under the

Textile, Clothing and Footwear Strategic Investment Program Act 1999

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Part 1

Introductory

1 Name of Scheme

This Scheme is the Textile, Clothing and Footwear Strategic Investment Program Scheme 1999, also known as the TCF (SIP) Scheme.

2 Commencement

The TCF (SIP) Scheme commences on gazettal.

3 Definitions

In the TCF (SIP) Scheme:

ABN has the meaning given by section 41 of the A New Tax System (Australian Business Number) Act 1999.

acquisition includes acquisition by purchase or lease.

ACN has the meaning given by section 9 of the Corporations Law.

Act means the Textile, Clothing and Footwear Strategic Investment Program Act 1999.

associate has the meaning given by section 318 of the ITAA 1936.

auditor, for an entity to which the Corporations Law applies, means an independent auditor registered under Part 9.2 of the Corporations Law.

Australian-based, for an activity, for expenditure and for innovation, has the meaning given by section 4.

eligible expenditure, for a type of grant, means:

(a) for a Type 1 grant — eligible expenditure within the meaning of section 15; or

(b) for a Type 2 grant — eligible expenditure within the meaning of sections 23 to 26; or

(c) for a Type 4 or Type 5 grant — eligible expenditure within the meaning of section 30.

eligible TCF activity has the meaning given by section 5.
**Section 3**

**eligible TCF product** means a product resulting from an eligible TCF activity mentioned in paragraph 5 (1) (a) or (e).

**eligible TCF value added,** for an entity, has the meaning given by section 28.

**equipment** means tools or apparatus of a capital nature used exclusively for the operation of plant.

**financial owner,** for plant, equipment or another asset, means the person who is financially responsible for, and has control of, the plant, equipment or other asset.

**GST** has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999.*

**industrial property rights** has the meaning given by section 22.

**innovative,** for an eligible TCF product, means having an Australian-based innovation.

**ITAA 1936** means the *Income Tax Assessment Act 1936.*

**ITAA 1997** means the *Income Tax Assessment Act 1997.*

**pilot plant** has the meaning given by subsection 73B (1) of the ITAA 1936.

**plant** does not include a building or structure.

**pre-program year** has the meaning given by section 6.

**program period,** for an entity, means the period commencing at the beginning of the 2000/2001 program year and ending at the end of the 2004/2005 program year.

**program year** has the meaning given by section 6.

**registered Australian research agency** means a research agency registered under section 39F of the *Industry Research and Development Act 1986.*

**research and development activity** has the meaning given by section 73B of the ITAA 1936.

*Note* Only certain kinds of research and development activity give rise to eligible expenditure under the Scheme — see s 17.

**resultant entity** has the meaning given by section 29.

**sample production** has the meaning given by section 7.

**Scheme** means the TCF (SIP) Scheme.

**sent electronically** has the meaning given by section 94.
The TCF-dependent community has the meaning given by section 8.

TCF plant or equipment means plant or equipment used in an eligible TCF activity.

Total eligible revenue has the meaning given by section 9.

Note: The following terms used in the Scheme are defined in the Act:

- Australia
- claim
- entity
- grant
- income year
- manufacture
- Regional Assistance Program supplementation payments
- scheme debt
- Secretary
- strategic business plan.

4. Meaning of Australian-based

For the Scheme:

(a) an activity is Australian-based only if it is carried on in Australia; and

(b) expenditure is Australian-based only if it is incurred in Australia; and

(c) innovation is Australian-based only if it occurs in Australia.

5. Meaning of eligible TCF activity

(1) For the Scheme, each of the following activities is an eligible TCF activity:

(a) a manufacturing activity of a kind mentioned in Parts A to E of Schedule 1 carried on in Australia by an entity;

(b) an activity carried on in Australia by an entity in connection with, or incidental to, the design in Australia for manufacture in Australia of eligible TCF products, some or all of which are intended to be sold in Australia;
(c) an ancillary activity carried on in Australia by an entity in connection with, or incidental to, a manufacturing activity mentioned in paragraph (a) (the *manufacturing activity*) carried on in Australia by that entity or another entity if, and only to the extent that, operations in respect of the ancillary activity and the manufacturing activity are wholly and mutually interdependent;

(d) an ancillary activity carried on in Australia by an entity in connection with, or incidental to, an activity mentioned in paragraph (b) (the *design activity*) carried on by the entity or another entity if, and only to the extent that, operations in respect of the ancillary activity and the design activity are wholly and mutually interdependent;

(e) an activity of a kind mentioned in Part G of Schedule 1 carried on in Australia by an entity using an eligible TCF product resulting from a manufacturing activity mentioned in paragraph (a) carried on in Australia by the entity.

(2) However, an activity mentioned in paragraph (1) (a), (b), (c), (d) or (e), that is carried on by an entity both in Australia and elsewhere, is an eligible TCF activity only to the extent that it is carried on in Australia.

(3) In subsection (1), *ancillary activity* means:

(a) an early-stage processing activity of a kind mentioned in Part F of Schedule 1; or

(b) a warehousing and distribution activity.

### 6 Meaning of pre-program year and program year

(1) Each of the following periods is, for an entity, a *pre-program year*:

(a) the period commencing on 1 July 1998 and ending at the end of 30 June 1999 (the *1998/1999 pre-program year*);

(b) the period commencing on 1 July 1999 and ending at the end of 30 June 2000 (the *1999/2000 pre-program year*).

(2) Each of the following periods is, for an entity, a *program year*:

(a) the period commencing on 1 July 2000 and ending at the end of 30 June 2001 (the *2000/2001 program year*);
(b) the period commencing on 1 July 2001 and ending at the end of 30 June 2002 (the 2001/2002 program year);
(c) the period commencing on 1 July 2002 and ending at the end of 30 June 2003 (the 2002/2003 program year);
(d) the period commencing on 1 July 2003 and ending at the end of 30 June 2004 (the 2003/2004 program year);
(e) the period commencing on 1 July 2004 and ending at the end of 30 June 2005 (the 2004/2005 program year).

(3) However, if an entity adopts, under section 18 of the ITAA 1936, a 12 month accounting period ending on a date other than 30 June, a reference in the Scheme to a pre-program year or a program year, for that entity, is a reference to the equivalent 12 month accounting period for that entity.

Examples
1. For an entity whose adopted accounting period ends on 31 October 2001, the 2000/2001 program year is the period commencing on 1 November 2000 and ending at the end of 31 October 2001.
2. For an entity whose adopted accounting period ends on 31 March 2001, the 2000/2001 program year is the period commencing on 1 April 2000 and ending at the end of 31 March 2001.

(4) If, as a result of the operation of section 18 of the ITAA 1936, the program period for an entity would, apart from this subsection, exceed 5 years, the last program year of the program period is taken to end at the end of the period of 5 years commencing on the first day of the program period for the entity.

7 Meaning of sample production

(1) For the Scheme, sample production, for an eligible TCF product, means production of the product other than in commercial quantities.

(2) The production of an eligible TCF product for stockpiling is taken to be production in commercial quantities.
Section 8

8 Meaning of TCF-dependent community

(1) For the Scheme, a TCF-dependent community is a community within an area in Australia where:

(a) employment in eligible TCF activities constitutes more than 10% of the total employment in manufacturing in the area; or

(b) employment in eligible TCF activities constitutes more than 5% of the total employment in manufacturing in the area, and the rate of unemployment is higher than the national average rate of unemployment.

(2) For subsection (1):

(a) employment in an area, and rates of unemployment, are to be determined by reference to data from the 1996 Census of Population and Housing published before the commencement of this Scheme by the Australian Bureau of Statistics; and

(b) the boundaries of an area are to be determined by reference to Statistical Geography: Volume 3, Australian Standard Geographical Classification Urban Centres/Localities, 1996 Edition, published by the Australian Bureau of Statistics.

9 Meaning of total eligible revenue

(1) For the Scheme, total eligible revenue, for an entity (other than an entity mentioned in subsection (3)) and for a period, means the total revenue derived by the entity from sales, except sales to New Zealand, of the entity’s eligible TCF products during the period, excluding:

(a) any GST, excise or sales tax; and

(b) any subsidy given during the period by the Commonwealth, or a State or Territory.

(2) In subsection (1), a reference to the entity’s eligible TCF products is a reference:

(a) if the entity is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (a) — to eligible TCF products manufactured by the entity; or
(b) if the entity is not carrying on an eligible TCF activity mentioned in paragraph 5 (1) (a), but is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (b) in accordance with paragraphs 52 (4) (a) and (b) — to eligible TCF products manufactured on behalf of the entity by another entity; or

(c) if the entity is not carrying on an eligible TCF activity mentioned in paragraph 5 (1) (a), but is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (c) — to eligible TCF products manufactured by the entity that carries on the manufacturing activity mentioned in paragraph 5 (1) (c); or

(d) if the entity is not carrying on an eligible TCF activity mentioned in paragraph 5 (1) (a), but is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (d) — to eligible TCF products manufactured, on behalf of the entity that carries on the design activity mentioned in paragraph 5 (1) (d), by another entity; or

(e) if the entity is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (e) — to eligible TCF products produced by the entity as a result of that activity.

(3) If an entity is carrying on an eligible TCF activity of a kind mentioned in item 4 of Part A to Schedule 1 on a fee or commission basis, the total eligible revenue for the entity and for a period is the total fees and commissions earned by the entity during the period for that activity, excluding:

(a) any GST; and

(b) any subsidy given during the period by the Commonwealth, or a State or Territory.

## References to an entity

In the Scheme, a reference to an entity, in relation to the doing of any thing by the entity for the purposes of the Scheme, does not include a reference to an agent of the entity, unless the contrary intention appears.
Section 11

11 References to a grant for a program year

In the Scheme, a reference to a grant to an entity for a pre-program year or a program year is a reference to a grant to the entity relating to eligible expenditure incurred, or eligible TCF value added, by the entity in the pre-program year or program year.

12 References to the cost or price of plant, equipment etc

In the Scheme, a reference to the cost or price of land, buildings, plant, equipment, materials or anything else is a reference to the cost or price excluding any GST, excise or sales tax.
Part 2  Types of grant

Division 2.1  Introductory

13  Types of grant

There are to be 5 types of grant for the Scheme, as follows:
(a) grants in respect of new TCF plant/building expenditure (Type 1 grants);
(b) grants in respect of TCF research and development expenditure (Type 2 grants);
(c) grants in respect of TCF value-adding (Type 3 grants);
(d) special grants in respect of second-hand TCF plant expenditure (Type 4 grants);
(e) special miscellaneous grants in respect of TCF-dependent communities (Type 5 grants).
Division 2.2 Type 1 grants

14 What is a Type 1 grant

(1) A Type 1 grant, for an entity, is a grant relating to eligible expenditure by the entity in connection with, or incidental to, any of the following activities carried on by the entity in respect of an eligible TCF activity:

(a) the acquisition or construction of new TCF plant or equipment, of which the entity is the financial owner, for use exclusively in Australia;

(b) the acquisition or construction of a new building or structure, or alterations to an existing building or structure, of which the entity is the financial owner, to house and operate TCF plant or equipment, as a consequence of the acquisition or construction of new TCF plant and equipment mentioned in paragraph (a);

(c) the upgrade of existing TCF plant or equipment, of which the entity is the financial owner, in relation to environmental requirements of the Commonwealth, or a State or Territory;

(d) the acquisition of new computer hardware or software, or development of new computer software, that is:
   (i) for carrying on the activity; and
   (ii) capitalised in the entity's accounts.

(2) A Type 1 grant may be made:

(a) in relation to more than 1 eligible TCF activity; and

(b) in addition to a grant of another type under the Scheme.

(3) A Type 1 grant is payable in relation to eligible expenditure in a pre-program year as well as in a program year.

15 What is eligible expenditure for a Type 1 grant

(1) Expenditure is eligible expenditure for a Type 1 grant only if it is of a kind mentioned in this section and is incurred by the entity in accordance with this section.
(2) Expenditure must be on 1 or more of the activities mentioned in paragraphs 14 (1) (a) to (d).

(3) Expenditure on the purchase of new TCF plant or equipment:
   (a) must represent the value of the plant or equipment capitalised in the entity’s accounts, less the amount, if any:
      (i) recovered from any trade-in; or
      (ii) received from the sale of any plant or equipment decommissioned as a result of the purchase; and
   (b) is taken to have been incurred only at the time when the plant or equipment has been paid for and commissioned.

(4) Expenditure on the purchase of new TCF plant or equipment purchased under a hire purchase agreement or financed through a finance lease:
   (a) is taken to be the value of the plant or equipment shown in the hire purchase agreement or finance lease and depreciated in the entity’s accounts, less the amount, if any:
      (i) recovered from any trade-in; or
      (ii) received from the sale of any plant or equipment decommissioned as a result of the purchase; and
   (b) is taken to have been incurred only at the time when the last instalment under the agreement or lease has been paid and the plant or equipment has been commissioned.

(5) Expenditure on the construction of TCF plant or equipment:
   (a) is limited to the sum of:
      (i) the costs of materials; and
      (ii) direct labour costs (including on-costs and administrative support costs); and
      (iii) factory overhead (set at 110% of direct labour costs); and
      (iv) establishment and commissioning costs; and
   (b) must be capitalised in the entity’s accounts; and
   (c) is taken to have been incurred only at the time when the plant or equipment is commissioned or, if commissioning is not required, is fully operational.
(6) Expenditure on a new building or structure, or on alterations to an existing building or structure:
   (a) is limited to expenditure necessary for the efficient housing and operation of new TCF plant or equipment mentioned in paragraph 14 (1) (a); and
   (b) is taken to have been incurred only at the time when:
       (i) payment has been made; and
       (ii) if a certificate of occupancy is required — the certificate has been issued.

(7) Expenditure on the purchase of a new building or structure purchased under a hire purchase agreement or financed through a finance lease:
   (a) is taken to be the value of the building or structure shown in the hire purchase agreement or finance lease and capitalised in the entity’s accounts; and
   (b) is taken to have been incurred only at the time when:
       (i) the first instalment under the agreement or lease has been paid; and
       (ii) if a certificate of occupancy is required — the certificate has been issued.

(8) Expenditure on the upgrading of existing TCF plant or equipment is limited to the actual costs of the upgrade.

(9) Expenditure mentioned in this section must reflect costs based on normal commercial values and arms length transactions.

(10) For this section, an amount recovered from a trade-in, or received from the sale of decommissioned plant or equipment, must be based on normal commercial values and an arms length transaction.
Division 2.3 Type 2 grants

Subdivision 2.3.1 Activities for Type 2 grants

16 What is a Type 2 grant

(1) A Type 2 grant, for an entity, is a grant relating to eligible expenditure by the entity in connection with, or incidental to, any of the following activities carried on by, or on behalf of, the entity in respect of an eligible TCF activity:

(a) a research and development activity of a kind mentioned in section 17;

(b) a product development activity of a kind mentioned in subsections (2) and (3).

(2) For paragraph (1) (b), a product development activity must be:

(a) innovative product design within the meaning of section 18; or

(b) innovative process improvement within the meaning of section 19; or

(c) brand support within the meaning of section 20; or

(d) market research within the meaning of section 21; or

(e) obtaining industrial property rights within the meaning of section 22.

(3) For paragraph (1) (b), if a product development activity is carried on on behalf of the entity by another entity, the activity must be carried on under a written contract or in accordance with detailed and binding arrangements.

(4) A Type 2 grant may be made:

(a) in relation to more than 1 eligible TCF activity; and

(b) in addition to a grant of another type under the Scheme.
(5) A Type 2 grant is payable in relation to eligible expenditure in a program year.

Note: The application of s 73C (Recouped expenditure on research and development activities) of the ITAA 1936, and Subdiv 20A (Insurance, indemnity or other recoupment for deductible expenses) of the ITAA 1997, is relevant to a Type 2 grant.

17 Research and development activities

(1) For the Scheme, a research and development activity must be directed at a product or process.

(2) If the activity is not Australian-based, the activity must be necessary:
   (a) to carry on an Australian-based research and development activity (for example, product testing at a facility that is not available in Australia); or
   (b) to tailor an Australian-based research and development activity to the requirements of a particular market.

(3) If the activity is carried on on behalf of an entity by another entity:
   (a) if the activity is Australian-based, the other entity must be a registered Australian research agency; and
   (b) the activity must be carried on under a written contract or in accordance with detailed and binding arrangements.

18 Innovative product design

(1) For the Scheme, an innovative product design activity must be:
   (a) Australian-based; and
   (b) an activity directly concerned with:
      (i) the design, testing, trial and sample production of a particular innovative eligible TCF product; or
      (ii) innovation in the design, testing, trial and sample production of particular eligible TCF products.

(2) However, an activity ceases to be an innovative product design activity if it is routinely undertaken or is directed solely at achieving visual product differentiation.
Section 21

19 Innovative process improvement
For the Scheme, an innovative process improvement activity:
(a) must be Australian-based; and
(b) must be directed at innovative improvement of a production process for an eligible TCF product (for example, an improvement leading to a point of difference from, or changes of a technical nature to, the original production process).

20 Brand support
(1) For the Scheme, brand support comprises participation (other than as a retailer) by an entity in trade showings and in-store promotions of an innovative eligible TCF product:
(a) for which the entity has registered a trade mark, or has applied to register a trade mark, in Australia; and
(b) that is marketed, or is to be marketed, under that trade mark.

(2) However, brand support does not include media advertising, sponsorship or other media-related activities.

21 Market research
(1) For the Scheme, market research comprises market testing, market development or sales promotion (including consumer surveys) that is not routine and that has as its main purpose the introduction of an innovative eligible TCF product.

(2) Market testing, market development or sales promotion for a purpose mentioned in subsection (1) must be carried on before production (other than sample production) of the product.
22 Obtaining industrial property rights

(1) For the Scheme, obtaining industrial property rights in respect of an innovative eligible TCF product comprises:
   (a) the preparation and lodging of applications and other documents that are required to be lodged, in Australia or elsewhere, for the initial grant or registration of the rights; and
   (b) the initial grant or registration of the rights, in Australia or elsewhere.

(2) In subsection (1):
   industrial property rights means:
   (a) the rights (including equitable rights) possessed by a person under a law of Australia as:
      (i) the patentee of a patent in force for an invention; or
      (ii) the owner of a registered trade mark; or
      (iii) the owner of a registered design; or
   (b) rights possessed by a person under a law of a foreign country that are equivalent to the rights mentioned in paragraph (a).

Subdivision 2.3.2 Eligible expenditure for Type 2 grants

23 What is eligible expenditure for a Type 2 grant

Expenditure is eligible expenditure for a Type 2 grant only if it:
(a) is of a kind mentioned in, and is incurred in accordance with, this Subdivision; and
(b) reflects costs based on normal commercial values and arms length transactions.

24 Expenditure on research and development activities

(1) Expenditure on a research and development activity carried on by the entity must relate to 1 or more of the following:
   (a) salaries;
   (b) the acquisition or construction of TCF plant or equipment that is pilot plant or a plant prototype;
(c) non-capitalised prototype expenditure;
(d) costs of materials for the activity.

(2) Expenditure relating to salaries is limited to the sum of:
(a) salary costs of employees of the entity engaged primarily and directly on core elements of the activity (but not exceeding $120,000 in respect of any 1 employee) comprising:
   (i) regular salary costs (excluding fringe benefits); and
   (ii) salary on-costs set at 30% of those regular salary costs; and
(b) if the entity has a dedicated section for research and development activities, with a separate cost centre and separate, identifiable overheads — overhead costs set at 50% of regular salary costs mentioned in subparagraph (a) (i); and
(c) general administrative overhead costs set at 30% of regular salary costs mentioned in subparagraph (a) (i).

(3) Expenditure on the acquisition or construction of pilot plant or plant prototypes must comply with, and be incurred in accordance with, subsections 15 (3), (4) and (5), as if the expenditure related to new TCF plant or equipment mentioned in section 14.

(4) Non-capitalised prototype expenditure:
(a) must relate to the making of an initial model, mock-up or similar thing for an innovative eligible TCF product, or an innovative process for an eligible TCF product, including expenditure on dies, jigs and testing materials, but not including expenditure on general sales samples; and
(b) is taken to be the net expenditure after deduction of the proceeds (if any) of the sale of materials acquired for the purpose of paragraph (a).

Note Amounts and percentages mentioned in subs (2) may be reviewed during the period of the Scheme, and may be changed by amendment of the Scheme.
25 Expenditure on product development activities

(1) If a product development activity mentioned in section 18, 19, 20 or 21 is carried on by the entity, the expenditure must relate to salaries and materials costs incurred in Australia in carrying on the activity.

(2) Expenditure on salaries is to be treated in the same manner as salaries relating to research and development activities, and subsection 24 (2) applies accordingly.

(3) Expenditure on a product development activity mentioned in section 22 is limited to costs and fees directly related to the matters mentioned in that section.

26 Expenditure on travel not eligible

Expenditure is not eligible expenditure for this Subdivision if it relates to travel costs.
Division 2.4 Type 3 grants

27 What is a Type 3 grant

(1) A Type 3 grant, for an entity, is a grant relating to eligible TCF value added by the entity in respect of eligible TCF activities carried on by the entity in a program year.

(2) A Type 3 grant may be made to an entity for a program year only if a Type 1 or Type 2 grant is also made to the entity for the program year.

(3) A Type 3 grant may be made in addition to a grant of another type under the Scheme.

28 What is eligible TCF value added by an entity

For an entity, the total eligible TCF value added by the entity, in respect of eligible TCF activities carried on by the entity for a program year, is worked out in the way set out in Schedule 2.
Division 2.5  Type 4 and Type 5 grants

29 What is a Type 4 or Type 5 grant

(1) A Type 4 grant is a grant relating to eligible expenditure:
   (a) in connection with, or incidental to, an eligible TCF activity; and
   (b) on the acquisition of state-of-the-art second-hand TCF plant or equipment that complies with subsections (3) and (4); and
   (c) as part of, or as a direct consequence of, a restructuring initiative that complies with subsection (5); and
   (d) by the resultant entity mentioned in subsection (5).

(2) A Type 5 grant is a grant relating to eligible expenditure by the resultant entity in connection with, or incidental to, ancillary activities relating to a restructuring initiative that complies with subsection (5).

(3) For paragraph (1)(b), the state-of-the-art second-hand TCF plant or equipment must be acquired by the resultant entity from 1 or more of the entities taking part in the restructuring initiative.

(4) For paragraph (1)(b), the state-of-the-art second-hand TCF plant or equipment must not be plant or equipment:
   (a) costing as much as, or more than, equivalent new TCF plant or equipment; or
   (b) in respect of which a subsidy or similar benefit has been paid by the Commonwealth, or a State or Territory.

(5) For paragraph (1)(c), the restructuring initiative must:
   (a) involve the restructuring (including by way of merger or takeover) or reconfiguration of 2 or more entities carrying on eligible TCF activities:
      (i) at least 1 of which is carrying on eligible TCF activities in a TCF-dependent community; and
Types of grant
Type 4 and Type 5 grants

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(ii) at least 1 of which is not financially viable, or is likely in the foreseeable future not to be financially viable; and

(iii) each of which is not an associate of another entity taking part in the restructuring initiative; and

(b) result in at least 1 entity (the resultent entity) that:

(i) is carrying on eligible TCF activities in a TCF-dependent community; and

(ii) is likely to be more financially viable than it would be if the restructuring initiative did not take place; and

(c) be directed at the expansion of existing markets, or at the establishment of new segmental markets, for eligible TCF products; and

(d) be likely to result in demonstrable economic benefits (including, but not limited to, sustained or increased employment) both nationally and for the TCF-dependent community in which the resultant entity is located.

(6) A Type 4 or Type 5 grant may be made in addition to a grant of another type under the Scheme.

(7) A Type 4 or Type 5 grant is payable in relation to eligible expenditure incurred in the 1999/2000 pre-program year as well as in a program year.

(8) In this section:

ancillary activities includes, but is not limited to, the decommissioning, dismantling, transportation, reinstallation and recommissioning of state-of-the art second-hand TCF plant or equipment mentioned in paragraph (1) (b).

30 What is eligible expenditure for a Type 4 or Type 5 grant

(1) Expenditure is eligible expenditure for a Type 4 grant only if it is in respect of an eligible TCF activity carried on in a TCF-dependent community and is incurred in accordance with this section.
(2) Expenditure on the purchase of state-of-the-art second-hand TCF plant or equipment is taken to have been incurred only at the time when the plant or equipment has been paid for and commissioned.

(3) Expenditure on the purchase of state-of-the-art second-hand TCF plant or equipment purchased under a hire purchase agreement or financed through a finance lease is taken to have been incurred only at the time when the first instalment under the agreement or lease has been paid and the plant or equipment has been commissioned.

(4) Expenditure is eligible expenditure for a Type 5 grant only if it is in respect of ancillary activities mentioned in subsection 29 (2) and is incurred in accordance with this section.

(5) Expenditure must reflect costs based on normal commercial values and arms length transactions.

(6) For the Scheme, expenditure incurred by any of the entities taking part in the restructuring initiative in respect of ancillary activities mentioned in section 29 is taken to have been incurred by the resultant entity.
Part 3

Registration of entities for Type 1, Type 2 and Type 3 grants

31 Application for registration for Type 1, Type 2 and Type 3 grants

(1) An entity that intends to make a claim for a Type 1, Type 2 or Type 3 grant must apply to the Secretary to be registered for the Scheme.

(2) An entity is not eligible to apply for registration unless the entity carries on, or proposes to carry on, an eligible TCF activity.

(3) An application for registration must be in respect of:
   (a) 1 or both of the pre-program years and the 2000/2001 program year; or
   (b) a program year.

(4) The application:
   (a) must be in writing in a form approved by the Secretary; and
   (b) must include the information mentioned in subsection (5); and
   (c) must be signed in the manner indicated in the form.

Note Applications and other documents under the Scheme may be sent electronically — see s 94.

(5) For subsection (4), the application must contain the following:
   (a) the name of the applicant entity;
   (b) the entity’s ABN or ACN, and date of formation or incorporation, if applicable;
   (c) if the applicant entity is a trust — the type of trust and details of the beneficiaries;
   (d) contact addresses (both street and postal);
   (e) the names of directors and major shareholders (if applicable), and of key management personnel;
(f) details of the size of the entity (including current employment levels and the employment levels for the 2 income years of the entity before the income year in which the application is made), as well as annual turnover and a general description of the entity’s activities;

(g) details of any other entity whose operations are required, under the Corporations Law, to be consolidated with those of the applicant entity, including the other entity’s ACN, the names of directors and major shareholders, and an organisation chart for the consolidated operations;

(h) if section 36 applies to the entity — the option in Schedule 3 that is to apply to the entity.

(6) The applicant entity must give to the Secretary, together with the application for registration, the documents and information mentioned in sections 32, 33 and 34.

32 Financial statements etc

(1) For subsection 31 (6), the applicant entity must give the financial information required by this section.

(2) If the entity has carried on business operations in the 3 income years of the entity before the income year in which the application is made, the entity must give the financial information mentioned in subsection (4) for those 3 income years.

(3) If the entity (not being an entity mentioned in subsection (2)) has carried on business operations in 1 or more of the 3 income years of the entity before the income year in which the application is made, the entity must give the financial information mentioned in subsection (4) for those income years.

(4) For subsections (2) and (3), the financial information is:

(a) if the entity is required, under section 296 of the Corporations Law, to prepare financial reports in accordance with accounting standards:

(i) financial reports prepared in accordance with those standards; and
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(ii) if the entity is required, under section 301 of the Corporations Law, to have an annual audit of the financial report — a copy of the auditor’s report; or

(b) in any other case — financial statements comprising a balance sheet and a profit and loss statement, together with notes to the statements and underlying assumptions made in their preparation.

33 Description of activities and estimates of expenditure

For subsection 31 (6), the applicant entity must give:

(a) a detailed description of eligible TCF activities and eligible TCF products in relation to which claims are likely to be made under the Scheme; and

(b) the estimated total eligible expenditure in respect of which claims are likely to be made under the Scheme.

34 Strategic business intent

For subsection 31 (6) the applicant entity must give a statement of strategic business intent that:

(a) is drawn from the strategic business plan mentioned in section 35; and

(b) includes the business, operational and financial strategies that will guide the entity to sustainable operations for eligible TCF activities beyond the end of the program period.

35 Strategic business plan

(1) The applicant entity must have a strategic business plan for the entity that complies with this section.

Note A strategic business plan means a strategic business plan that incorporates a strategic investment plan — see s 4 of the Act.

(2) The strategic business plan must relate to:

(a) the program year (including any pre-program year) in respect of which the application for registration is made; and
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(b) the remaining program years (if any) of the program period.

(3) However, if, for an entity, there are less than 2 remaining program years in the program period, the strategic business plan must relate, in addition to the program years mentioned in paragraphs (2) (a) and (b), to 1 or more income years of the entity after the end of the program period, so that the strategic business plan relates to at least 3 income years of the entity.

(4) The strategic business plan must indicate the entity’s strategic direction for the whole of the program period.

(5) The strategic business plan must:

(a) give details of the strategies (including financial plans) that will enable the entity to carry on sustainable operations for eligible TCF activities beyond the end of the program period; and

(b) include appropriate operational plans, details of financial commitment and controls, financial projections and assumptions on which forecasts are based.

(6) If the Secretary, in writing, requests the entity to make available a copy of the entity’s strategic business plan, the entity must comply with the request within a reasonable period specified by the Secretary in the request.

36 Election of pro rata option for Type 1 grant

(1) If the entity intends to make a claim for a Type 1 grant in 1 or both of the pre-program years as well as at least 1 program year, the entity must elect which of Option 1, Option 2 or Option 3 in Schedule 3 is to apply to the entity for the apportionment of eligible expenditure incurred by the entity.

(2) An election by an entity under subsection (1) cannot be changed except:

(a) with the approval in writing of the Secretary; and

(b) before a claim is made by the entity.
(3) If the registration of an entity is transferred to another entity (the transeree entity) under subsection 40 (3), the transeree entity is taken to have made the election made by the entity whose registration is transferred, unless the Secretary approves in writing another election by the transeree entity.

37 Additional information

(1) If it appears to the Secretary that an application by an entity, or information submitted with the application, is incomplete or insufficient for the purpose of registration, the Secretary, in writing, may request the entity to do 1 or both of the following:
   (a) make a further application in such form as is specified in the request;
   (b) give further information specified in the request.

(2) The entity must comply with a request under subsection (1) within a reasonable period specified by the Secretary in the request.

38 Time limits for registration

(1) An entity wishing to make a claim for a grant for a pre-program year and the 2000/2001 program year must apply to be registered before 1 April 2000.

(2) An entity wishing to make a claim for a grant for a program year only must apply to be registered as follows:
   (a) for the 2000/2001 program year — before 1 July 2000;
   (b) for the 2001/2002 program year — before 1 April 2001;
   (c) for the 2002/2003 program year — before 1 April 2002;
   (d) for the 2003/2004 program year — before 1 April 2003;
   (e) for the 2004/2005 program year — before 1 April 2004.
Section 39

(3) Despite subsections (1) and (2), an entity that fails to apply, for a pre-program year or a program year (except the 2000/2001 program year), before 1 April of the relevant year but applies before 1 July of that year is taken, for this Part, to have complied with those subsections in relation to the pre-program year or program year.

Note 1 Section 43 provides that the period for making an application for registration or renewal of registration may be extended by the Secretary in exceptional circumstances.

Note 2 Payment of a grant to entity that is registered after the relevant date in subs (1) or (2) may be deferred — see s 86.

39 Registration of entity

(1) The Secretary must notify an entity of the receipt of the entity’s application for registration.

(2) The Secretary must register the entity if the Secretary is satisfied, on consideration of the application, that the entity:

(a) is eligible to apply for registration; and

(b) has complied with requirements of this Part for registration.

(3) If the Secretary is not satisfied as to a matter mentioned in paragraph (2) (a) or (b), the Secretary must refuse to register the entity.

(4) For subsections (2) and (3), the Secretary is not to be concerned with the eligibility of the entity for a grant under the Scheme.

40 Effects of registration

(1) If the Secretary registers an entity, the registration is taken to have effect from the day on which the Secretary receives the initial application, whether or not a further application is made under section 37.

(2) Registration of an entity has effect for 1 or both of the pre-program years and the 2000/2001 program year, or for the program year, for which registration was sought.
Section 41

(3) Registration of an entity is not transferable (whether by way of or in consequence of sale, assignment, charge, execution, bankruptcy, insolvency or otherwise) except with the approval, in writing, of the Secretary.

(4) Registration of an entity does not, of itself, give rise to an entitlement to a grant.

41 Application for renewal of registration

(1) Subject to this section, an entity that is registered, or has been registered, for a pre-program year and the 2000/2001 program year, or for a program year, may apply for a renewal of registration for a later program year (whether or not the entity intends to make a claim for that program year).

(2) An entity is not eligible to apply for a renewal of registration if it no longer carries on, or no longer proposes to carry on, an eligible TCF activity.

(3) An application for renewal must:
   (a) be in a form approved by the Secretary; and
   (b) include the information mentioned in subsection (4).

(4) For paragraph (3) (b), the information is as follows:
   (a) details of any variation or updating of the information given to the Secretary under section 33, 34 or 37 in relation to an activity in respect of which the entity proposes to make a claim (including any change in the estimated total eligible expenditure in respect of which claims are likely to be made);
   (b) if the entity has disposed of any assets in respect of which a grant has been made to the entity under the Scheme — details of the disposal.

(5) Sections 37 and 38 apply to an application for renewal of registration in the same way as they apply to an application for registration under section 31.

Note Section 37 provides that the Secretary may request additional information. Section 38 imposes time limits for an application for registration.
42 Renewal of registration

(1) The Secretary must notify an entity of the receipt of an entity's application for renewal of registration.

(2) The Secretary must renew the registration if the Secretary is satisfied that the entity:
   (a) is eligible to apply for a renewal of registration; and
   (b) has complied with requirements of:
       (i) section 41; and
       (ii) if section 54 applies to the entity in relation to the renewal — that section.

Note Section 54 provides, among other things, that an entity that is registered for a program year (including a pre-program year) except the 2003/2004 and 2004/2005 program years must make a claim for a Type 1, Type 2 or Type 3 grant for the program year not later than the time of applying for renewal of registration for the next program year. If the making of a claim is delayed, so is renewal of registration. The consequences of delaying renewal of registration can be that payment of a claim for the next program year is delayed, or that the entity is not registered, and is not eligible for a grant, for the next program year — see s 45 (Effect of non-registration) and 86 (Payment of grants).

(3) If the Secretary is not satisfied as to any of the matters mentioned in paragraph (2) (a) or (b), the Secretary must refuse to renew the registration.

(4) For subsections (2) and (3), the Secretary is not to be concerned with the eligibility of the entity for a grant under the Scheme.

(5) Section 40 applies to an application for renewal and to the renewal of registration in the same way as it applies to an application for registration under section 31 and to registration.

Note Section 40 deals with the effect and transferability of registration.

43 Extension of time for registration or renewal

(1) The Secretary, on the written application of an entity, may extend the period within which the entity may apply for registration, or renewal of registration, for a program year.
(2) An application must be made before the expiry of last day on which, apart from the operation of this section, the application for registration or renewal of registration may be made under section 38.

(3) The Secretary must not extend the period unless the Secretary is satisfied that, because of exceptional circumstances affecting the entity, there is good reason to do so.

(4) Subsection (5) applies to an entity if:
   (a) the entity intends to:
      (i) make a claim for a program year; and
      (ii) apply for a renewal of registration for the next succeeding program year; and
   (b) the period within which the entity may make the claim is extended under section 59.

(5) For an entity to which this subsection applies, the period within which the entity may apply for registration is extended by a period corresponding to the period for which the period for making the claim is extended.

44 Notice of registration or refusal to register etc

(1) The Secretary must give written notice to an entity of:
   (a) the entity's registration or renewal of registration; and
   (b) if the period within which an application for registration or renewal is made is extended under section 43 — details of the extension.

(2) If the Secretary refuses an application for registration or renewal of registration, or for an extension of the period for registration or renewal, the Secretary must give written notice of:
   (a) the refusal; and
   (b) the reasons for the refusal.

Note Section 89 requires the notice to be accompanied by a statement about the entity's right to have the decision reconsidered or reviewed.
Section 45

(3) If the Secretary has not decided the application within 28 days after the application is made, the entity may, at any time, give the Secretary written notice that the entity wishes to treat the application as having been refused.

(4) For section 87, if the entity gives notice under subsection (3), the Secretary is taken to have refused the application, and to have notified the entity of the decision, on the day on which the entity gives notice.

45 Effect of non-registration

(1) An entity that is not registered for a pre-program year is not eligible for a Type 1 grant for that year.

(2) An entity that is not registered for a program year is not eligible for a Type 1, Type 2 or Type 3 grant for that year.

46 Register of entities

(1) The Secretary must maintain a register of entities that are registered for the Scheme.

(2) In any proceedings relating to the Scheme, a document that appears to a court or tribunal to be a certificate by the Secretary, in accordance with subsection (3), certifying a statement to the effect mentioned in subsection (4):
   (a) is evidence of the truth of the statement; and
   (b) may be received in evidence without being proved.

(3) The certificate must be signed by the Secretary and expressed to be in accordance with the register.

(4) The statement must be to the effect that, on a specified date, or during a specified period, a specified entity was, or was not, registered for a pre-program year or a program year.
Notice of likely change in eligible expenditure

(1) An entity that is registered for a program year or a pre-program year must give written notice to the Secretary of:

(a) any likely significant change in eligible expenditure to be incurred by the entity in the program year or pre-program year in respect of which the entity proposes to make a claim; and

(b) any likely implications of the change on the estimated total eligible expenditure in respect of which claims are likely to be made by the entity under the Scheme.

(2) The entity must give the notice as soon as the entity becomes aware of the likely change.
Part 4 Notice of intention to claim for Type 4 or Type 5 grant

48 Notice of intention to claim for Type 4 or Type 5 grant

(1) This section applies to an entity if the entity intends:
   (a) to take part in a restructuring initiative of a kind mentioned in section 29; and
   (b) that a claim will be made by the resultant entity for a Type 4 or Type 5 grant for the 1999/2000 pre-program year or a program year in relation to the restructuring initiative.

(2) The entity must give notice to the Secretary, acting on behalf of the Minister, of the intention to make a claim.

(3) The notice must:
   (a) be given jointly by all the entities intending to take part in the restructuring initiative; and
   (b) be in writing in a form approved by the Secretary; and
   (c) be signed in the manner indicated in the form; and
   (d) be accompanied by the information mentioned in section 49.

   Note: Notices and other documents under the Scheme may be sent electronically — see s 94.

(4) Despite subsection (1), notice of intention may be given in respect of a restructuring initiative that:
   (a) commenced in the 1999/2000 pre-program year, but before the commencement of the Scheme; and
   (b) at the commencement of the Scheme had not yet been completed.
49 Information to be given with notice of intent

(1) For paragraph 48 (3) (d), the information to accompany the notice of intention is the following:

(a) the information mentioned in subsection 31 (5) about each entity intending to take part in the restructuring initiative;

(b) details of the restructuring initiative, including:
   (i) the principles underlying the restructuring initiative; and
   (ii) the benefits and risks of the restructuring initiative; and
   (iii) the expected outcomes of the restructuring initiative, addressing, in particular the matters mentioned in paragraphs 29 (3) (b) to (d); and
   (iv) the corporate structure of the resultant entity;

(c) details of the likely costs and other likely implications of the restructuring initiative, including:
   (i) the projected cost to each entity taking part in the restructuring initiative; and
   (ii) the impact on employees of each entity at all locations; and
   (iii) the funding arrangements for the restructuring initiative;

(d) the estimated total eligible expenditure in respect of which claims are likely to be made under the Scheme.

(2) The information must be in writing.

50 Additional information

(1) If it appears to the Secretary that the notice of intention given by the entities mentioned in section 48, or information submitted with the notice, is incomplete, or is insufficient to enable the Minister to make a decision under section 51, the Secretary, in writing, may request the entity to do 1 or both of the following:

(a) give a further notice in such form as is specified in the request;
Section 51

(b) give further information, in writing, specified in the request.

(2) The entity must comply with a request under subsection (1) within a reasonable period specified by the Secretary in the request.

51 Consideration of notice of intention

(1) The Secretary must send to the Minister, as soon as practicable:
   (a) the notice of intention given under section 48 or 50; and
   (b) the documents and information accompanying the notice under section 49; and
   (c) the further information, if any, given under section 50.

(2) If the Minister is satisfied, on consideration of the notice of intention and the information, that the proposed restructuring initiative would, if carried out in accordance with the notice and information, comply with subsection 29 (5), the Minister must confirm the notice.

(3) If the Minister is not satisfied as to the matter set out in subsection (2), the Minister must refuse to confirm the notice.

(4) Confirmation by the Minister of the notice of intention must be in writing to each of the entities intending to take part in the restructuring initiative.

(5) If the Minister refuses to confirm the notice of intention, the Minister must give notice to each of the entities of:
   (a) the refusal; and
   (b) the reasons for the refusal.

(6) Confirmation of a notice of intention does not, of itself, give rise to any entitlement to a grant.
Part 5  
Claims for grants

Division 5.1  
Making a claim

Subdivision 5.1.1  
Claims for a Type 1, Type 2 or Type 3 grant

52  
Claim for Type 1, Type 2 or Type 3 grant

(1) An entity may make a claim to the Secretary, in accordance with this Subdivision, for:
   (a) a Type 1 grant for a pre-program year; or
   (b) a Type 1, Type 2 or Type 3 grant for a program year.

(2) An entity may make a claim for a Type 1 grant for a pre-program year only if the entity also makes a claim for a grant for the 2000/2001 program year.

(3) An entity that is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (a) may make a claim for a Type 1, Type 2 or Type 3 grant relating to eligible expenditure by the entity in respect of an eligible TCF activity mentioned in paragraph 5 (1) (c) for a pre-program year or a program year only if the entity also makes a claim relating to eligible expenditure by the entity in respect of the eligible TCF activity mentioned in paragraph 5 (1) (a) for the pre-program year or program year.

(4) An entity that is not carrying on an eligible TCF activity mentioned in paragraph 5 (1) (a) may make a claim for a Type 1, Type 2 or Type 3 grant relating to eligible expenditure by the entity in respect of an eligible TCF activity mentioned in paragraph 5 (1) (b) only if:
   (a) the entity’s primary business is the carrying on of an eligible TCF activity mentioned in paragraph 5 (1) (b); and
   (b) the activity represents the whole of the design activity for eligible TCF products to which the claim relates; and
(c) the manufacture of the eligible TCF products is carried on in Australia on behalf of the entity by another entity.

Example for paragraph (4) (b)
For a claim in respect of the design of footwear, both the upper and the sole must be designed in Australia by the entity. If the sole or upper is designed by another entity, or overseas, the claim may not be made.

(5) An entity that is not carrying on an eligible TCF activity mentioned in paragraph 5 (1) (a) may make a claim for a Type 1 or Type 2 grant relating to eligible expenditure by the entity in respect of an eligible TCF activity mentioned in paragraph 5 (1) (c) for a pre-program year or a program year only if the entity that carries on the manufacturing activity mentioned in paragraph 5 (1) (c) makes a claim relating to eligible expenditure by the entity in respect of that manufacturing activity for the pre-program year or program year.

(6) An entity that is not carrying on an eligible TCF activity mentioned in paragraph 5 (1) (b) may make a claim for a Type 1 or Type 2 grant relating to eligible expenditure by the entity in respect of an eligible TCF activity mentioned in paragraph 5 (1) (d) for a pre-program year or a program year only if the entity that carries on the design activity mentioned in paragraph 5 (1) (d) makes a claim relating to eligible expenditure by the entity in respect of that design activity for the pre-program year or program year.

(7) An entity that is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (e) may make a claim for a Type 1, Type 2 or Type 3 grant relating to eligible expenditure by the entity in respect of that activity for a pre-program year or a program year only if the entity also makes a claim relating to eligible expenditure by the entity in respect of an eligible TCF activity mentioned in paragraph 5 (1) (a) for the pre-program year or program year.

(8) However, the Secretary, on written application by an entity, may exempt the entity from a requirement under subsection (3), (5), (6) or (7) for a pre-program year or a program year if the Secretary is satisfied that in the circumstances of the case there is good reason to do so.
(9) A claim for a Type 2 grant relating to eligible expenditure by an entity (the contracting entity) in respect of a research and development activity or product development activity carried on, on behalf of the contracting entity, by another entity must be made by the contracting entity.

(10) A claim must:
(a) be in a form approved by the Secretary; and
(b) be signed in a manner indicated in the form; and
(c) be accompanied by the documents and information mentioned in section 53.

Note 1 A Type 1 grant is payable for a pre-program year as well as a program year — see sub 14 (3). A Type 2 or Type 3 grant is payable only for a program year — see sub 16 (5) and 27 (1).

Note 2 A Type 3 grant may be made to an entity for a program year only if a Type 1 or Type 2 grant is also made to the entity for the program year — see sub 27 (2).

Note 3 Claims and other documents under the Scheme may be sent electronically — see s 94.

53 Information in support of a claim for Type 1, Type 2 or Type 3 grant
For paragraph 52 (10) (c), the documents and information to accompany a claim are the following:
(a) financial reports or statements prepared (and, if so required, audited) in accordance with section 32, for the pre-program year or program year in respect of which the claim is made;
(b) a detailed description of eligible TCF activities:
   (i) carried on in the pre-program year or program year; and
   (ii) in respect of which the claim is made;
(c) if the claim is for a Type 1 or Type 2 grant — a statement of eligible expenditure incurred by the entity in the pre-program year or program year in respect of which the claim is made, together with an auditor’s report verifying the eligible expenditure;
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(d) if the claim is for a Type 3 grant — the information required to work out, in accordance with Schedule 2, the total eligible TCF value added for the entity for the program year in respect of which the claim is made, together with an auditor’s report verifying the information.

54 When claim for Type 1, Type 2 or Type 3 grant must be made — pre-program and early program years

(1) An entity must make a claim for a Type 1, Type 2 or Type 3 grant:
   (a) for the 2000/2001 program year (including, if applicable, a claim for a pre-program year) — before 1 July 2002; or
   (b) for the 2001/2002 program year — before 1 July 2003; or
   (c) for the 2002/2003 program year — before 1 July 2004.

(2) Subsection (1) applies to an entity for a program year whether or not the entity applies for renewal of registration for the next following program year.

(3) An entity that fails to comply with subsection (1) for a program year (including, if applicable, a pre-program year), is not eligible for a Type 1, Type 2 or Type 3 grant for the program year (or for a Type 1 grant for a pre-program year), unless the period for making the claim is extended under section 59 and the entity makes the claim within the extended period.

Note Section 59 provides that the period for making a claim may be extended by the Secretary in exceptional circumstances.

(4) Nothing in subsections (1) to (3) affects the operation of subsections (5) to (10).

(5) Subsection (6) applies to an entity if the entity:
   (a) is registered for a pre-program year and the 2000/2001 program year, or the 2000/2001 program year; and
   (b) is making a claim for a Type 1 grant for a pre-program year, or a Type 1, Type 2 or Type 3 grant for the 2000/2001 program year; and
   (c) is applying for renewal of registration for the 2002/2003 program year.
(6) The entity must make a claim for the grant after the end of the 2000/2001 program year, but not later than at the time of applying for the renewal of registration.

(7) Subsection (8) applies to an entity if the entity:
(a) is registered for the 2001/2002 program year; and
(b) is making a claim for a Type 1, Type 2 or Type 3 grant for the program year; and
(c) is applying for renewal of registration for the 2003/2004 program year.

(8) The entity must make a claim for the grant after the end of the 2001/2002 program year but not later than at the time of applying for the renewal of registration.

(9) Subsection (10) applies to an entity if the entity:
(a) is registered for the 2002/2003 program year; and
(b) is making a claim for a Type 1, Type 2 or Type 3 grant for the program year; and
(c) is applying for renewal of registration for the 2004/2005 program year.

(10) The entity must make a claim for the grant after the end of the 2002/2003 program year but not later than at the time of applying for the renewal of registration.

55 **When claim for Type 1, Type 2 or Type 3 grant must be made — later program years**

(1) An entity must make a claim for a Type 1, Type 2 or Type 3 grant for the 2003/2004 program year, after the end of the program year but before 1 July 2005.

(2) An entity must make a claim for a Type 1, Type 2 or Type 3 grant for the 2004/2005 program year, after the end of the program year but before 1 July 2006.
(3) An entity that fails to comply with subsection (1) or (2) is not eligible for a Type 1, Type 2 or Type 3 grant for the program year, unless the period for making a claim is extended under section 59 and the claim is made within the extended period.

Note Section 59 provides that the period for making a claim may be extended by the Secretary in exceptional circumstances.

Subdivision 5.1.2 Claims for Type 4 or Type 5 grant

56 Claim for Type 4 or Type 5 grant

(1) This section applies if:

(a) notice of intention to make a claim for a Type 4 or Type 5 grant for the 1999/2000 pre-program year or a program year has been given by an entity in accordance with sections 48 to 50; and

(b) the Minister has confirmed the notice under section 51.

(2) The resultant entity may make a claim to the Secretary, acting on behalf of the Minister, in accordance with this Subdivision for a Type 4 or Type 5 grant for the pre-program year or program year.

(3) A claim must be:

(a) in a form approved by the Secretary; and

(b) signed in the manner indicated in the form; and

(c) be accompanied by the documents and information mentioned in section 57.

Note Claims and other documents under the Scheme may be sent electronically — see s 94.

57 Information in support of claim for Type 4 or Type 5 grant

For paragraph 56 (3) (c), the documents and information to accompany a claim are the following:

(a) financial reports or statements of the resultant entity, prepared (and, if so required, audited) in accordance with section 32, for the program year or pre-program year in respect of which the claim is made;
(b) details of the restructuring initiative, including:
   (i) the outcomes, addressing, in particular, the matters mentioned in paragraphs 29 (5) (b) to (d); and
   (ii) the resultant entity’s corporate structure; and
   (iii) the costs and other implications of the restructuring initiative;
(c) a detailed description of eligible TCF activities carried on in the pre-program year or program year and in respect of which the claim is made;
(d) a statement of eligible expenditure incurred by the resultant entity in the pre-program year or program year in respect of which the claim is made, together with an auditor’s report verifying the eligible expenditure;
(e) a statement of strategic business intent that includes the business, operational and financial strategies that will guide the resultant entity to sustainable operations for eligible TCF activities beyond the end of the program period;
(f) if the claim is for a Type 4 grant — a statement giving details as to whether the second-hand TCF plant or equipment acquired is state-of-the-art, having regard to the matters mentioned in section 70.

58 When claim for Type 4 or Type 5 grant must be made

(1) An entity must make a claim for a Type 4 or Type 5 grant for the 1999/2000 pre-program year within the period:
   (a) beginning immediately after the end of the 2000/2001 program year; and
   (b) ending immediately before the expiry of 12 months after the end of the program year.

(2) An entity must make a claim for a Type 4 or Type 5 grant for a program year within the period:
   (a) beginning immediately after the end of the program year; and
   (b) ending immediately before the expiry of 12 months after the end of the program year.
(3) An entity that fails to comply with subsection (1) for the pre-program year, or with subsection (2) for a program year, is not eligible for a Type 4 or Type 5 grant for the pre-program year or program year, unless the period for making a claim is extended under section 59 and the entity makes the claim within the extended period.

Subdivision 5.1.3 Extension of time for making claim

59 Extension of time for making claim

(1) The Secretary, on the written application of an entity, may extend the period within which the entity may make a claim for a grant for a particular pre-program year or program year.

(2) An application must be made before the end of the period within which, apart from the operation of this section, the claim must be made under this Division.

(3) The Secretary must not extend the period unless the Secretary is satisfied that, because of exceptional circumstances affecting the entity, there is good reason to do so.

60 Notice of decision about extending claim period

(1) The Secretary must give written notice to the entity of a decision of the Secretary on an application under section 59.

(2) If the Secretary refuses the application, the Secretary must give written notice of:

(a) the refusal; and

(b) the reasons for the refusal.

Note Section 89 requires the notice to be accompanied by a statement about the entity’s right to have the decision reconsidered or reviewed.

(3) If the Secretary has not decided an application within 28 days after the application is made, the entity may, at any time, give the Secretary written notice that the entity wishes to treat the application as having been refused.
(4) For section 87, if the entity gives notice under subsection (3), the Secretary is taken to have refused the application, and to have notified the entity of the decision, on the day on which the entity gives notice.
Division 5.2  
Assessment of claims

Subdivision 5.2.1  
Assessment of eligibility for Type 1, Type 2 and Type 3 grants

61  
Assessment of eligibility for Type 1, Type 2 and Type 3 grants

(1) On receipt of a claim for a Type 1, Type 2 or Type 3 grant, the Secretary must assess the claim and decide whether the claimant entity is eligible for a grant of a particular amount.

(2) The particular amount of a grant mentioned in subsection (1) is the amount that, apart from the operation of Division 5.3, would be the amount of the grant.

(3) Before the Secretary can be satisfied that a claimant entity is eligible for a grant of a particular amount, the Secretary must be satisfied as to the matters set out in subsections (4), (5), (6), (7), (8) and (9), so far as applicable.

(4) The Secretary must be satisfied that the entity is registered for the Scheme for the program year.

(5) The Secretary must be satisfied that the entity has carried on, in the program year, the eligible TCF activity in respect of which the claim is made, in accordance with the documents and information given to the Secretary under sections 33, 34 and 37, as varied under the Scheme.

(6) The Secretary must be satisfied:

(a) if the claim is for a Type 1 grant — as to the amount of expenditure that is eligible expenditure within the meaning of section 15, incurred by the entity within the program year; or

(b) if the claim is for a Type 2 grant — as to the amount of expenditure that is eligible expenditure within the meaning of sections 23 to 26, incurred by the entity within the program year; or
(c) if the claim is for a Type 3 grant — as to the amount that is the total eligible TCF value added by the entity for the program year in accordance with section 28.

(7) If the claim is for a Type 3 grant, the Secretary must be satisfied that the entity is also eligible for a Type 1 or Type 2 grant for the program year.

(8) The Secretary must be satisfied that the claim has been made in accordance with the requirements of sections 52 to 55.

(9) In addition, in deciding whether the claimant entity is eligible for a grant of a particular amount, the Secretary must take into account, as far as applicable, sections 62 to 66 and 75.

(10) In this section:

*program year* includes, in the case of a claim for a Type 1 grant, a pre-program year.

62 Arms length expenditure — Type 1, Type 2 and Type 3 grants

(1) In working out the amount of eligible expenditure for a Type 1 or Type 2 grant, if it appears to the Secretary that expenditure has been incurred in a transaction that was not at arms length, the Secretary may take the amount of the expenditure to be the amount that would reasonably have been expected to have been incurred if the transaction had been at arms length.

(2) In working out the amount of eligible TCF value added for a Type 3 grant, if it appears to the Secretary that information has been given to the Secretary under paragraph 53 (d) on the basis of transactions that were not at arms length, the Secretary may take the amount of value added to be the amount that would reasonably have been expected to have occurred if the transactions had been at arms length.

63 Pro rata adjustment of eligible expenditure for Type 1 grants

(1) This section applies to an entity if the entity:

(a) has made a claim for a Type 1 grant in 1 or both of the pre-program years as well as at least 1 program year; and
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(b) has made an election under section 36 as to which of Option 1, Option 2 or Option 3 in Schedule 3 is to apply to the entity for the apportionment of eligible expenditure incurred by the entity.

(2) The purpose of this section is to ensure that the total amount of Type 1 grants payable to the entity in respect of eligible expenditure in both the pre-program years and the program years does not exceed the total amount of Type 1 grants that would, apart from this section, be payable to the entity in respect of eligible expenditure by the entity in the program period.

(3) For the purpose of deciding the particular amount of a grant for a pre-program year or a program year, the entity's eligible expenditure for the pre-program year or program year is taken to be the proportion of the expenditure that would, apart from this section, have been the eligible expenditure for the pre-program year or program year, that is specified in the appropriate column of the Table relating to the option in Schedule 3 elected by the entity.

64 Cap for Type 1 grants

(1) The amount of a Type 1 grant made to an entity in respect of eligible expenditure incurred by the entity during a particular pre-program year or program year must not exceed 20% of that eligible expenditure.

Note Section 15 sets out what is eligible expenditure for a Type 1 grant.

(2) If section 63 applies to the entity, the eligible expenditure is the amount that is taken to be the eligible expenditure under that section.

65 Cap for Type 2 grants

The amount of a Type 2 grant made to an entity in respect of eligible expenditure incurred by the entity during a particular program year must not exceed 45% of that eligible expenditure.

Note Sections 23 to 26 set out what is eligible expenditure for a Type 2 grant.
66 Cap for Type 3 grants
The total of Type 3 grants made to an entity in respect of TCF value added by the entity during a program year must not exceed the lesser of:
(a) 5% of the total eligible TCF value added by the entity in respect of eligible TCF activities carried on by the entity during the program year; and
(b) the sum of:
   (i) the total of Type 1 grants made to the entity for the program year; and
   (ii) the total of Type 2 grants made to the entity for the program year; and
   (iii) the total of Type 4 grants made to the entity for the program year.

Note Section 28 and Sch 2 provide for the working out of eligible TCF value added for an entity.

67 Period for assessment and notice of decisions — Type 1, Type 2 and Type 3 grants
(1) The Secretary must give notice, in writing, to an entity making a claim for a Type 1, Type 2 or Type 3 grant, within 60 days after receipt of the claim:
   (a) of the Secretary’s decision as to the entity’s eligibility for a grant; or
   (b) if the decision cannot be made within 60 days after receipt of the claim — of the period within which the decision will be made, giving reasons for the delay in making the decision.

(2) The Secretary must give notice, in writing, to a claimant entity of a decision to which paragraph (1) (b) applies within 7 days after the decision is made.

(3) If the Secretary decides that an entity is not eligible for a Type 1, Type 2 or Type 3 grant, the notice must include reasons for the decision.

Note Section 89 requires the notice to be accompanied by a statement about the entity’s right to have the decision reconsidered or reviewed.
Section 68

(4) Subsection (5) applies to an entity if the Secretary has not given notice to the entity of the Secretary’s decision as to eligibility for a grant:
(a) within the period of 60 days mentioned in subsection (1); or
(b) if the decision is one to which paragraph (1) (b) applies — within 7 days after the end of the period notified by the Secretary under that paragraph.

(5) An entity to which this subsection applies may, at any time, give the Secretary written notice that the entity wishes to treat the claim as having been refused.

(6) For section 87, if the entity gives notice under subsection (5), the Secretary is taken to have refused the claim, and to have notified the entity of the decision, on the day on which the entity gives notice.

68 Effect of decision as to eligibility for Type 1, Type 2 and Type 3 grants
A decision by the Secretary under this Subdivision that a claimant entity is eligible for a grant of a particular amount does not, of itself, give rise to an entitlement to the grant.

Subdivision 5.2.2 Assessment of eligibility for Type 4 and Type 5 grants

69 Assessment of eligibility for Type 4 and Type 5 grants

(1) On receipt of a claim for a Type 4 or Type 5 grant, the Minister must assess the claim and decide whether the claimant entity is eligible for a grant of a particular amount.

(2) The particular amount of a grant mentioned in subsection (1) is the amount that, apart from the operation of Division 5.3, would be the amount of the grant.
(3) Before the Minister can be satisfied that a claimant entity is eligible for a grant of a particular amount, the Minister must be satisfied as to the matters set out in subsections (4), (5), (6) and (7), as far as applicable.

(4) The Minister must be satisfied that the restructuring initiative complies with the requirements of subsection 29 (5).

(5) The Minister must be satisfied that second-hand TCF plant or equipment:
   (a) was acquired as part of, or as a direct consequence of, the restructuring initiative; and
   (b) is state-of-the-art; and
   (c) complies with subsections 29 (3) and (4).

(6) The Minister must be satisfied:
   (a) if the claim is for a Type 4 grant — as to the amount of expenditure that is eligible expenditure within the meaning of subsection 30 (1) incurred by the entity within the program year; or
   (b) if the claim is for a Type 5 grant — as to the amount of expenditure that is eligible expenditure within the meaning of subsection 30 (2) incurred by the entity within the program year.

(7) The Minister must be satisfied that the claim has been made in accordance with the requirements of sections 56 to 58.

(8) In addition, in deciding whether the claimant entity is eligible for a grant of a particular amount, the Minister must take into account, as far as applicable, sections 70 to 72 and 75.

(9) In this section:

  *program year* includes the 1999/2000 pre-program year.
70 **State-of-the art TCF plant or equipment — Type 4 grants**

In considering, for the purpose of being able to be satisfied for paragraph 69 (5) (b) as to whether second-hand TCF plant or equipment is state-of-the-art, the Minister must have regard:

(a) to the viable economic life of the second-hand TCF plant or equipment; and

(b) if the viable economic life of the TCF plant or equipment is less than 70% of the economic life of the plant or equipment when new — to whether the plant or equipment has a demonstrable and relevant technical excellence, based on a capacity to improve manufacturing efficiency (due, for example, to its design or specification).

71 **Arms length expenditure — Type 4 and Type 5 grants**

In working out the amount of eligible expenditure for a Type 4 or Type 5 grant, if it appears to the Minister that expenditure has been incurred in a transaction that was not at arms length, the Minister may take the amount of the expenditure to be the amount that would reasonably have been expected to have been incurred if the transaction had been at arms length.

72 **Cap for Type 4 and Type 5 grants**

(1) The amount of a Type 4 grant made to an entity in respect of eligible expenditure incurred by the entity during a particular pre-program year or program year must not exceed 20% of the eligible expenditure incurred during the pre-program year or program year, respectively.

(2) The amount of a Type 5 grant made to an entity in respect of eligible expenditure incurred by the entity during a particular program year must not exceed 20% of that eligible expenditure.

*Note* Section 30 sets out what is eligible expenditure for a Type 4 or Type 5 grant.
73 **Notice of decisions — Type 4 and Type 5 grants**

The Minister must give notice in writing to an entity making a claim for a Type 4 or Type 5 grant, of the Minister's decision as to the entity's eligibility for a grant.

74 **Effect of decision as to eligibility for Type 4 and Type 5 grants**

A decision by the Minister under this Subdivision that a claimant entity is eligible for a grant of a particular amount does not, of itself, give rise to an entitlement to the grant.

**Subdivision 5.2.3  Overall limits on grants**

75 **Modulation of Type 1, Type 2, Type 4 and Type 5 grants**

(1) The modulation factor for a program year is worked out in accordance with the formula set out in Schedule 4.

(2) If the modulation factor for a program year is less than 1, the amount of a Type 1, Type 2, Type 4 or Type 5 grant made to an entity for a program year must not exceed the amount worked out in accordance with the formula:

\[ MF \times G \]

where:
- \( MF \) is the modulation factor for the program year.
- \( G \) is the amount of the grant for which, apart from this section, the entity would have been eligible under this Part.

(3) In this section, and in Schedule 4:

- **program year** means each of the following:
  - (a) the pre-program years and the 2000/2001 program year;
  - (b) the 2001/2002 program year;
  - (c) the 2002/2003 program year;
  - (d) the 2003/2004 program year;
  - (e) the 2004/2005 program year.
Division 5.3  Determination and payment of claims

Subdivision 5.3.1  Determination of entitlement — Type 1, Type 2 and Type 3 grants

76  Request for determination of Type 1, Type 2 and Type 3 grants

(1) A claimant entity, at or after the time of making a claim for a Type 1, Type 2 or Type 3 grant, may request the Secretary to determine whether the entity is entitled to a grant in respect of the claim.

(2) A request under subsection (1) must be:
   (a) in writing in a form approved by the Secretary; and
   (b) signed in a manner indicated by the form.

   Note  Requests in writing and other documents under the Scheme may be sent electronically — see s 94.

(3) The request must be accompanied by:
   (a) a statement of the total eligible revenue for the entity for the income year of the entity preceding the income year during which the entity expects that the grant will become payable; and
   (b) an auditor’s report verifying the total eligible revenue.

77  Determination of entitlement — Type 1, Type 2 and Type 3 grants

(1) If the Secretary is satisfied, on receipt of a request in accordance with section 76, that the claimant entity is entitled to be paid a grant of a particular amount, the Secretary must determine that the entity is entitled to be paid the grant.

(2) Before the Secretary can be satisfied that the entity is entitled to be paid a grant of a particular amount, the Secretary must have decided, in accordance with Subdivision 5.2.1, that the entity is eligible for a grant of a particular amount.
(3) In addition, in determining whether the entity is entitled to be paid a grant of a particular amount, the Secretary must take into account subsection (4) and, as far as applicable, sections 78 to 80 and 85.

(4) An entity is not entitled to be paid a Type 1, Type 2 or Type 3 grant if, at the time when the Secretary's determination is to be made, the entity is no longer carrying on an eligible TCF activity.

78 Threshold expenditure for pre-program years — Type 1 grants

(1) An entity is not entitled to be paid a Type 1 grant for a pre-program year unless:

(a) the total amount of the eligible expenditure incurred by the entity in the pre-program years in respect of eligible TCF activities exceeds $200,000 (the threshold amount); or

(b) if the total amount of the eligible expenditure in the pre-program years in respect of eligible TCF activities does not exceed the threshold amount — the total amount of eligible expenditure for Type 1 and Type 2 grants incurred by the entity in 1 or more of the program years, and in respect of which the entity has made a claim, exceeds the threshold amount.

(2) If, for an entity, the total amount of the eligible expenditure mentioned in paragraph (1) (a) or (b) exceeds the threshold amount, the entity becomes entitled to be paid a Type 1 grant in respect of eligible expenditure in each of the pre-program years if, apart from this section, the entity would be entitled to be paid the grant.

79 Threshold expenditure for Type 1, Type 2 and Type 3 grants — program years

(1) An entity is not entitled to be paid a Type 1, Type 2 or Type 3 grant for a program year unless the sum of the amounts mentioned in subsection (2) exceeds $200,000 (the threshold amount).
(2) For subsection (1), the amounts are:
(a) the total amount of eligible expenditure for Type 1 and Type 2 grants incurred by the entity in the program year in respect of which the claim is made; and
(b) the total amount of eligible expenditure for Type 1 and Type 2 grants:
   (i) incurred by the entity in previous program years; and
   (ii) in respect of which a claim was made but, by reason of the operation of this section, a grant was not paid.

Note 1 To take advantage of para (2) (b), an entity must make a claim for a grant in respect of eligible expenditure incurred in a program year, even if the eligible expenditure, together with previously accumulated eligible expenditure (if any), will not exceed the threshold of $200,000.

Note 2 Eligible expenditure in a pre-program year does not count towards the $200,000 threshold for the program years.

(3) If, for an entity, the sum of the amounts mentioned in subsection (2) exceeds the threshold amount, the entity becomes entitled to be paid a Type 1, Type 2 or Type 3 grant in respect of eligible expenditure in each of the program years if, apart from this section, the entity would be entitled to be paid the grant.

80 Minimum additional expenditure

(1) An entity is not entitled to be paid a Type 1, Type 2 or Type 3 grant unless the total amount of relevant eligible expenditure mentioned in subsection (2) incurred by the entity in respect of eligible TCF activities exceeds $100,000.

(2) In subsection (1):
relevant eligible expenditure means eligible expenditure:
(a) in respect of which the entity has made a claim; and
(b) that has not been taken into account in the payment of any previous grant.
(3) However, subsection (2) does not apply to a grant in respect of amounts of eligible expenditure accumulated by, or incurred in, the 2004/2005 program year.

(4) Nothing in this section affects the operation of section 79.

81 Notice of determination — Type 1, Type 2 and Type 3 grants

(1) The Secretary must give notice, in writing, of a determination made under section 77 to the entity requesting the determination.

(2) The notice must be given as soon as practicable after the determination is made.

(3) If the Secretary determines that the entity is not entitled to be paid a grant, the notice must include reasons for the decision.

Note Section 89 requires the notice to be accompanied by a statement about the entity’s right to have the decision reconsidered or reviewed.

Subdivision 5.3.2 Determination of entitlement — Type 4 and Type 5 grants

82 Request for determination of a Type 4 or Type 5 grant

(1) A claimant entity, at or after the time of making a claim for a Type 4 or Type 5 grant, may request the Minister to determine whether the entity is entitled to be paid a grant in respect of the claim.

(2) A request under subsection (1) must be:
   (a) in writing in a form approved by the Secretary; and
   (b) signed in a manner indicated by the form.

Note Requests in writing and other documents under the Scheme may be sent electronically — see s 94.
(3) The request must be accompanied by:
(a) a statement of the entity’s total eligible revenue derived by the entity from sales of eligible TCF products during the income year of the entity preceding the income year during which the entity expects that the grant will become payable; and
(b) an auditor’s report certifying the statement.

83 Determination of entitlement — Type 4 and Type 5 grants

(1) If the Minister is satisfied, on receipt of a request in accordance with section 82, that the claimant entity is entitled to be paid a Type 4 or Type 5 grant of a particular amount, the Minister must determine that the entity is entitled to be paid the grant.

(2) Before the Minister can be satisfied that the entity is entitled to be paid a grant of a particular amount, the Minister must have decided, in accordance with Subdivision 5.2.2, that the entity is eligible for a grant of a particular amount.

(3) In addition, in determining whether the entity is entitled to be paid a grant of a particular amount, the Minister must take into account subsection (4) and section 85.

(4) An entity is not entitled to be paid a Type 4 or Type 5 grant if, at the time when the Minister’s determination is to be made, the entity is no longer carrying on an eligible TCF activity.

84 Notice of determination — Type 4 and Type 5 grants

(1) The Minister must give notice, in writing, of a determination made under section 83 to the entity that has requested the determination.

(2) The notice must be given as soon as practicable after the determination is made.
Subdivision 5.3.3  Overall limits on grant entitlements

85  Sales-based cap for grants

(1) The total grants that become payable to an entity during a particular income year of the entity (the *claim year*) in respect of eligible expenditure incurred by the entity otherwise than during an eligible start-up period of the entity must not exceed 5% of the total eligible revenue for the entity for the income year of the entity preceding the claim year.

(2) The total of the Type 1, Type 2 and Type 3 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, in respect of eligible expenditure incurred by the entity during an eligible start-up period of the entity, must not exceed 15% of 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.

(3) In subsection (2):

*eligible start-up investment amount*, for an entity and for an income year of the entity, means the total expenditure incurred by the entity during the income year on the acquisition of any land, building, structure, plant, equipment, materials or other asset for the carrying on of an eligible TCF activity for the first time.

*eligible start-up period*, for an entity, means the period:

(a) beginning on the day on which the entity first enters into a financial commitment to carry on an eligible TCF activity, not having previously carried on an eligible TCF activity; and

(b) ending 12 months after the day on which the entity first begins production (other than sample production) of an eligible TCF product.
(4) For the definition of *eligible start up investment amount* in subsection (3), subsections 15 (3), (4), (5) (6) and (7) apply to expenditure on any building, structure, plant, equipment, materials or other asset mentioned in the definition as they apply to expenditure on any building, structure, plant, equipment, materials or other asset mentioned in section 15.

**Subdivision 5.3.4  Payment of grants**

86  Payment of grants

(1) If the Minister or Secretary determines that an entity is entitled to be paid a grant of a particular amount, the Secretary must pay the amount to the entity.

(2) The grant must be paid as soon as practicable after the Minister or Secretary has made the determination.

(3) However, the Secretary may, by notice in writing to an entity, defer the payment of a Type 1, Type 2 or Type 3 grant to an entity in respect of eligible expenditure incurred in a pre-program year or a program year if:

(a) the entity applied for registration or renewal of registration for the program year next following the program year in which the claim was made; but
(b) failed to apply before the day specified in subsection 38 (1) or (2) that is applicable to that program year.

(4) If the Secretary defers the payment of a grant under subsection (3), the Secretary must pay the grant not later than at the earliest time when a grant (if any) in respect of eligible expenditure incurred in a later program year becomes payable.

*Note*  Section 46 of the Act provides that Scheme debts may be deducted from 1 or more grants payable to an entity, and if so deducted, the grant is taken to have been paid in full to the entity.
Part 6 Miscellaneous

87 Request for reconsideration of decision by Secretary

(1) If an entity affected by a decision of the Secretary under the Scheme is dissatisfied with the decision, the entity may request the Secretary to reconsider the decision.

(2) However, subsection (1) does not apply to a decision of the Secretary arising from the application, in relation to the entitlement to be paid a grant, or to the amount of a grant, of section 64, 65, 66, 72, 75, 78, 79, 80 or 85.

(3) A request must:
   (a) be in writing; and
   (b) set out the reasons for the request; and
   (c) be given to the Secretary within 30 days after the entity is notified of the decision.

Note If a request is made under this section, s 41 of the Administrative Appeals Tribunal Act 1975 (which deals with the operation and implementation of a decision that is subject to review) 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 — see subs 22 (4) of the Act.

88 Reconsideration by Secretary

(1) On receiving a request in accordance with section 87, the Secretary must reconsider the decision.

(2) The Secretary may:
   (a) confirm or revoke the decision; or
   (b) vary the decision in such manner as the Secretary thinks fit.

(3) If the Secretary does not confirm, revoke or vary the decision before the end of the period of 30 days after the day on which the Secretary receives the request, the Secretary is taken, at the end of that period, to have confirmed the decision.
Section 89

(4) If the Secretary confirms, revokes or varies the decision before the end of the period mentioned in subsection (3), the Secretary, by notice in writing given to the applicant, must inform the applicant of the result of the reconsideration of the decision and the reasons for confirming, revoking or varying the decision.

(5) An application may be made to the Administrative Appeals Tribunal for a review of a decision that is confirmed or varied under this section.

Note: If, under subs (3), a decision is taken to be confirmed, s 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 commencing on the day on which the decision is taken to have been confirmed and ending on the 28th day after that day — see subs 22 (7) of the Act.

89 Statement to accompany notification of decisions

(1) This section applies if:

(a) written notice is given to an entity affected by a decision of the Secretary under the Scheme; and

(b) the notice is to the effect that the decision has been made.

(2) The notice must include a statement to the effect that:

(a) if the entity is dissatisfied with the decision, the entity may request a reconsideration of the decision by the Secretary; and

(b) if dissatisfied with a decision made by the Secretary on that reconsideration confirming or varying the first-mentioned decision, the entity, subject to the Administrative Appeals Tribunal Act 1975, may apply to the Administrative Appeals Tribunal for a review of the decision.

Note: A failure to include a statement in a notice mentioned in this section does not affect the validity of a decision — see subs 23 (3) of the Act.
90 Statement to accompany notice of decision on reconsideration

(1) This section applies if:
   (a) the Secretary confirms or varies a decision as mentioned in subsection 88 (2); and
   (b) gives to the entity written notice of the confirmation or variation of the decision.

(2) The notice must include a statement to the effect that if the entity is dissatisfied with the decision so confirmed or varied, the entity, subject to the Administrative Appeals Tribunal Act 1975, may apply to the Administrative Appeals Tribunal for a review of the decision.

Note A failure to include a statement in a notice mentioned in this section does not affect the validity of a decision — see subs 23 (3) of the Act.

91 Disposal of plant and equipment — Type 1 grant

(1) It is a condition of a Type 1 grant to an entity that any plant or equipment (the original plant or equipment) in relation to which the grant is made is not to be disposed of (whether by sale, as scrap, or otherwise):
   (a) before the end of the program period; or
   (b) after the end of the program period, if the value of the plant or equipment at the time of disposal is not less than 70% of the economic life of the plant or equipment when new.

(2) However, an entity does not fail to fulfil the condition if the entity:
   (a) acquires similar new plant or equipment with improved performance to replace the original plant and equipment; and
   (b) the original plant or equipment is used as a trade-in on the new plant or equipment.

Note If an entity does not fulfil a condition of a grant, the Commonwealth may recover the whole, or part, of the grant as a scheme debt. The scheme debt may be recovered by court action or by deduction from other grants payable to the entity — see s 43 to 47 of the Act.
Section 92

92 Grants not transferable

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

93 Giving of notices etc by Minister or Secretary

For the Scheme, unless the contrary intention appears, a notice or other document required or permitted to be given by the Minister or Secretary to an entity is taken to be given:

(a) in the case of service otherwise than by post on an individual — on the day on which the notice or other document is:
   (i) delivered to the individual in person; or
   (ii) delivered to the individual’s address for service or last address known to the Secretary; or
(b) in the case of service otherwise than by post on a body corporate — on the day on which the notice or other document is delivered to the registered office, or the address for service, of the body corporate; or
(c) in the case of service by post on an entity — on the day on which the notice or other document would ordinarily be delivered in the due course of post or, if the entity establishes that it was delivered on a later day, on that later day.

94 Entity may send documents electronically

(1) An application, claim, request in writing, notice, statement or other document required to be given to the Minister or Secretary under the Scheme may be sent electronically.

(2) For subsection (1), a document is sent electronically if it is transmitted to the Minister or Secretary in an electronic format approved by the Secretary.
Access to premises

(1) An authorised person may enter any premises of an entity, with the consent of the entity and on the production of the authorised person's authority under subsection (6), for the purpose of obtaining information that is relevant to the operation of the Scheme.

(2) If an authorised person enters the premises under subsection (1), the authorised person may exercise the powers mentioned in subsection (4) for the purpose mentioned in subsection (1).

(3) An authorised person who enters an entity's premises under subsection (1) must leave the premises immediately, and is not entitled to exercise, or continue to exercise, the powers of an authorised person under subsection (4), if the entity revokes the consent given for subsection (1).

(4) An authorised person who enters premises under subsection (1) may:
   (a) inspect the premises; and
   (b) take photographs (including a video recording) and measurements, and make notes and sketches, of the premises and any plant or equipment on the premises; and
   (c) if there are reasonable grounds for believing that a book, record or other document (including a document in electronic form stored on a computer) is relevant to the operation of the Scheme — inspect, take extracts from, and make copies of, the book, record or other document.

(5) It is a condition of a grant to an entity that the entity must not:
   (a) unreasonably refuse to consent to the entry of an authorised person under subsection (1); or
   (b) if the entity gives consent to an authorised person for subsection (1) — unreasonably revoke the consent.

(6) The Secretary, in writing, may authorise for the purpose of this section:
   (a) an employee in the Department; or
   (b) an employee of an authorised Commonwealth contractor.
Section 95

(7) In this section:

authorised Commonwealth contractor has the meaning given by subsection 52 (6) of the Act.

authorised person means an employee who is authorised under subsection (6).
Schedule 1

Eligible TCF activities

(section 5)

Note: The activities listed in this Schedule are based on Div C, Subdiv 22 of the Australian and New Zealand Standard Industrial Classification (ANZSIC).

Part A

Textile Fibre, Yarn and Woven Fabric Manufacturing

1 Man-Made Fibre Textile Manufacturing (including blends)

This category consists of manufacturing continuous fibre filament, fibre staple or yarns, tyre cord yarn or fabrics woven, non-woven, felted or tufted from those yarns, or mixed yarns, wholly or predominantly of man-made fibres. Manufacturing of elastic or elastomeric yarns or threads or fabrics are also included.

- Fibres, manufacturing
- Filament, manufacturing
- Yarns, manufacturing
- Yarns, elastic or elastomeric, manufacturing
- Tyre cord yarns or fabrics, manufacturing
- Fabrics or other textiles, manufacturing
- Fabrics, elastic or elastomeric, manufacturing
- Lacing, woven, manufacturing

2 Cotton Textile Manufacturing (including blends)

This category consists of manufacturing of yarns, fabrics woven, non-woven, felted or tufted, wholly or predominantly of cotton or similar fibres including flax, jute, hemp or kapok.

- Yarns, manufacturing
- Tyre cord yarns or fabrics, manufacturing
- Fabrics or other textiles, manufacturing

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3  **Wool Textile Manufacturing (including blends)**

This category consists of the manufacturing of yarns, fabrics woven, non-woven, felted or tufted, wholly or predominantly of wool or other animal fibre including mohair, angora, cashmere, alpaca or silk.

- Fellmongered, slipe or skin wool, manufacturing
- Yarns, woollen or other animal fibre, manufacturing
- Fabrics or other textiles, from woollen or worsted manufacturing processes, derived from animal fibres

4  **Textile Finishing**

This category consists of any activities involved in the processes of dyeing, printing, and finishing, including any process of impregnation, coating or lamination for imparting particular end use properties to yarns, fabrics or other textiles, whether in-house or on a fee or commission basis, using client supplied materials or materials purchased or transferred in from other manufacturing entities.

- Textile dyeing, including textile pigmentation
- Textile printing, including flock printing
- Label, printed cloth, manufacturing
- Impregnation, coating or lamination

5  **Textile Floor Covering Manufacturing**

This category consists of manufacturing of carpets, rugs or other textile floor coverings and includes manufacturing of felt or felt products, mats or matting of jute or twisted rags.

- Felt, manufacturing
- Floor coverings, textile, manufacturing
- Floor rugs, textile, manufacturing
- Underfelt, manufacturing

The manufacturing of felt clothing, grass, sisal or coir mats or matting, rubber underlay and rubber floor coverings is excluded from this category.
6 **Textile Product Manufacturing n.e.c.**

This category consists of textile product manufacturing n.e.c.
- Cleaning cloth, manufacturing
- Embroidered fabrics, manufacturing
- Fabrics, manufacturing n.e.c.
- Flock, manufacturing
- Hemp product, manufacturing n.e.c.
- Hessian goods, manufacturing n.e.c.
- Kapok, manufacturing
- Labels or badges, woven cloth, manufacturing

**Part B Knitting Mills Manufacturing**

1 **Hosiery Manufacturing**

This category consists of manufacturing of hosiery.
- Panty hose, manufacturing
- Socks, manufacturing
- Stockings, manufacturing
- Tights, manufacturing

2 **Cardigan and Pullover Manufacturing**

This category consists of the manufacturing of knitted cardigans, pullovers or similar garments.
- Custom knitting, of pullovers or cardigans
- Jackets, knitted, manufacturing
- Sweaters, knitted, manufacturing
- Twin sets, knitted, manufacturing
- Waistcoats, knitted, manufacturing
3 Knitting Mill Product Manufacturing n.e.c.

This category consists of the manufacturing of knitted or crocheted fabrics or knitted clothing n.e.c.

- Crocheted fabrics, manufacturing
- Knitted fabrics, manufacturing
- Outerwear, knitted, manufacturing (except hosiery, cardigans or pullovers)
- Sleepwear, knitted, manufacturing
- Swimwear, knitted, manufacturing
- Underwear, knitted, manufacturing (except hosiery)

Part C Clothing Manufacturing

1 Men's and Boys' Wear Manufacturing

This category consists of the manufacturing of men's or boys' outerwear from purchased or transferred in materials.

- Coats or jackets, men's or boys', manufacturing (except from fur or leather)
- Dust coats, manufacturing
- Jeans, men's or boys', manufacturing
- Overalls, manufacturing
- Shirts, men's or boys', manufacturing
- Shorts, men's or boys', manufacturing
- Suits, men's or boys', manufacturing (except from leather)
- Trousers, men's or boys', manufacturing
- Uniforms, men's or boys', manufacturing

The manufacturing of men's or boys' headwear, footwear, or garments made from leather or fur, is excluded from this category.
2 Women's and Girls' Wear Manufacturing

This category consists of the manufacturing of women's or girls' outerwear from purchased or transferred in materials.

- Blouses, manufacturing
- Coats or jackets, manufacturing (except from fur, leather, plastic or rubber)
- Jeans, women's or girls', manufacturing
- Outerwear, women's or girls', manufacturing (except from fur, leather, plastic or rubber)
- Suits, women's or girls', manufacturing (except from leather or plastic)
- Tunics, women's or girls', manufacturing
- Uniforms, women's or girls', manufacturing

The manufacturing of women's or girls' waterproof clothing or clothing made from fur, leather, plastic or rubber, is excluded from this category.

3 Sleepwear, Underwear and Infant Clothing Manufacturing

This category consists of the manufacturing of foundation garments, underwear, sleepwear or infants' clothing from purchased or transferred in materials.

- Brassieres, manufacturing
- Corsets, manufacturing
- Foundation garments, manufacturing
- Girdles, manufacturing
- Infants' clothing, manufacturing
- Sleepwear, manufacturing
- Underwear, manufacturing
4 Clothing Manufacturing n.e.c.

This category consists of manufacturing of headwear, fur or leather clothing, clothing or clothing accessories n.e.c., and also includes the provision of clothing trade services such as hem stitching, basque knitting or buttonholing.

- Belts, manufacturing (for clothing)
- Clothing accessories, manufacturing n.e.c.
- Clothing, fur, manufacturing
- Clothing, leather or leather substitute, manufacturing n.e.c.
- Clothing manufacturing n.e.c., including clothing for protective or safety purposes
- Gloves, manufacturing (except rubber gloves)
- Handkerchiefs, manufacturing
- Hats* or headwear,* manufacturing
- Laces, manufacturing (for footwear)
- Leather or leather substitute suit, coat or uniforms, manufacturing
- Swimwear, manufacturing (except rubber bathing caps)
- Recreational clothing #
- Ties, manufacturing
- Waterproof clothing, manufacturing (except headwear, footwear or leather clothing)

Part D Footwear Manufacturing

This category consists of the manufacturing of footwear, or footwear components.

- Boots,* manufacturing
- Footwear component, manufacturing
- Footwear,* manufacturing
- Industrial footwear, including safety or protective footwear
- Sandals,* manufacturing
- Shoes,* manufacturing
- Slippers,* manufacturing
- Thongs, manufacturing

**Part E**  
**Leather and Leather Product Manufacturing**

**Leather Tanning and Fur Dressing**

This category consists of post full substance activities including sammying, splitting, shaving, tanning, currying, dressing, dyeing, embossing or japanning leather, animal skins or fur.
- Fur dressing or dyeing
- Hide and skin tanning, currying, dressing, crusting, dyeing or finishing
- Leather manufacturing
- Leather tanning

**Part F**  
**Early-Stage Processing (as part of the expanded business of a TCF manufacturing operation)**

1  
**Natural Fibre Processing**

This category consists of natural fibre processing.

(a) **Wool or other animal fibres** — all processing activities up to and including top making, including:
- Scouring
- Tops, unspun, manufacturing
- Carding or combing

(b) **Cotton** — all processing activities up to and including sliver production, including the following:
- Ginning, cleaning, baling and classing of cotton
- Doubling and drawing of cotton
- Carding, slivering and combing of cotton
(c) Others, including flax, hemp, jute or silk — all processing activities up to and including:
  • Tow, manufacturing

2 Man-made Fibres

This category consists of man-made fibre processing.

Early-stage processing activities relating to man-made fibres — all processing activities up to and including man-made tows and tops, including:
  • Synthetic fibre tops, unspun, manufacturing
  • Tow, manufacturing

3 Leather

This category consists of early-stage leather processing.

Early-stage leather processing — all processing activities up to and including wet blueing or equivalent stage, including:
  • Fleshing, de-hairing, fellmongering, skin pickling, wet blueing and wet whiting of hides and skins

Part G Made-up Textile and Leather Product Manufacturing

This category consists of manufacturing of made-up textile and leather products including household textile goods, blinds, tents, awnings, sails, or goods of canvas or related materials.

  • Animal rugs, manufacturing
  • Awnings, textile, manufacturing
  • Bags or sacks, textile or canvas, manufacturing for packaging
  • Bags, leather or leather substitute, manufacturing
  • Binding, textile, (including plastic coated) manufacturing
  • Blinds, textile, manufacturing (including plastic coated blinds and woven slats for fabric blinds)
  • Canvas goods, manufacturing n.e.c.
  • Curtains manufacturing
• Flags or banners, manufacturing
• Harness, manufacturing
• Helmet*, manufacturing
• Hose, canvas or other textile, manufacturing
• Household textile goods, manufacturing
• Leather or leather substitute goods, manufacturing n.e.c.
• Machine belting, leather or leather substitute, manufacturing
• Motor vehicle covers, textile, manufacturing
• Nets, including fish nets, manufacturing
• Parachutes, manufacturing
• Ropes, twine, cord or cordage, strings (except paper string), braids or cable, manufacturing (except wire rope or wire cable)
• Saddles, manufacturing
• Sails, manufacturing
• Seat covers, manufacturing
• Sleeping bags, manufacturing
• Soft furnishings (except cushions, pillows)
• Suitcases, textile, manufacturing
• Tents, manufacturing (except oxygen tents or toy tents)
• Textile products, manufacturing n.e.c.
• Waterbags, textile, manufacturing

Definitions
In this Schedule:

n.e.c. means not elsewhere classified.

man-made fibres include cellulosics and synthetics.

Symbols

# If made predominantly from the products of activities listed in items 1, 2, 3 and 6 of Part A, or in item 3 of Part B.

* If made predominantly from leather or the products of activities listed in items 1, 2, 3 and 6 of Part A or in item 3 of Part B.
Schedule 2  
Method of working out total eligible TCF value added by an entity 
(Section 28)

1. Eligible TCF value added must be worked out on the basis of normal commercial values and arms length transactions.

2. Total eligible TCF value added by an entity in respect of the entity’s eligible TCF activities for a program year is worked out using the following formula:

Total eligible TCF value added = turnover plus change in stock minus (purchases plus transfers-in plus selected expenses)

where:

**turnover** is the sum of:

(a) revenue (exclusive of any GST, excise and sales tax) from:

(i) sales, except sales to New Zealand, of the entity’s eligible TCF products; or

(ii) if the entity is carrying on an eligible TCF activity of a kind mentioned in item 4 of Part A to Schedule 1 on a fee or commission basis — fees and commissions earned by the entity for that activity; and

(b) revenue from transfers-out of the entity’s eligible TCF products to associates of the entity; and

(c) all other operating income from outside the entity (for example, commission income, repair and service income, and rent, leasing and hiring income) from carrying on the entity’s eligible TCF activities,

but does not include receipts from interest, royalties, licensing fees, dividends or the proceeds of sale of non-current assets.
change in stock means the value of total closing stocks of the entity’s eligible TCF products less the value of total opening stocks of the entity’s eligible TCF products.

stocks mean finished eligible TCF products, work-in-progress, raw materials, fuels, and containers and packaging for the entity’s eligible TCF products.

purchases mean purchases of materials, components, containers, packaging, fuels, electricity, water, and eligible TCF products for further processing or assembling, for carrying on the entity’s eligible TCF activities.

transfers-in means transfers-in of eligible TCF products from associates of the entity for further processing or assembling, for carrying on the entity’s eligible TCF activities.

selected expenses means fees and commission expenses, repair and maintenance expenses, outward freight and cartage expenses, motor vehicle running expenses, and rent, leasing and hire expenses, incurred in carrying on the entity’s eligible TCF activities.

3. A reference in this Schedule to an entity’s eligible TCF products is a reference:

(a) if the entity is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (a) — to eligible TCF products manufactured by the entity; or

(b) if the entity is not carrying on an eligible TCF activity mentioned in paragraph 5 (1) (a), but is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (b) in accordance with paragraphs 52 (4) (a) and (b) — to eligible TCF products manufactured on behalf of the entity by another entity; or

(c) if the entity is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (c) — to eligible TCF products resulting from that activity.
Schedule 3  Pro rata adjustment of eligible expenditure for Type 1 grants

(section 63)

Note Subsection 63 (2) provides that the purpose of pro rata adjustment of eligible expenditure is to ensure that the total amount of Type 1 grants payable to an entity in respect of eligible expenditure in both the pre-program and program years does not exceed the total amount of Type 1 grants that would have been payable to the entity in respect of eligible expenditure by the entity in the 5 year program period. Subsection 63 (1) provides that the pro rata adjustment applies where an entity has eligible expenditure for either or both pre-program years as well as at least 1 program year. Under s 31 and 36, entities must elect, in their application for registration, which of the following options is to apply in calculating eligible expenditure incurred.

Option (1)  Phase In-Phase Out

<table>
<thead>
<tr>
<th>Pre-program/Program year</th>
<th>Proportion of Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998/1999</td>
<td>1/3</td>
</tr>
<tr>
<td>1999/2000</td>
<td>2/3</td>
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<tr>
<td>2000/2001</td>
<td>1</td>
</tr>
<tr>
<td>2001/2002</td>
<td>1</td>
</tr>
<tr>
<td>2002/2003</td>
<td>1</td>
</tr>
<tr>
<td>2003/2004</td>
<td>2/3</td>
</tr>
<tr>
<td>2004/2005</td>
<td>1/3</td>
</tr>
</tbody>
</table>

Note Under this option, full benefit for actual expenditure undertaken is received in respect of the first 3 years of the program period (that is, in 2000/01, 2001/02 and 2002/03). One third of the actual expenditure undertaken in the first pre-program year (1998/99) and the last program year (2004/05), and two thirds of the actual expenditure undertaken in the second pre-program year (1999/2000) and the second last program year (2003/04) are included. This results in eligible expenditure generating grants which are the equivalent of grants in the 5 year program period.
Option (2) Pro rata over 7 years

<table>
<thead>
<tr>
<th>Pre-program/Program Year</th>
<th>Proportion of Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998/1999</td>
<td>5/7</td>
</tr>
<tr>
<td>1999/2000</td>
<td>5/7</td>
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</tr>
<tr>
<td>2003/2004</td>
<td>5/7</td>
</tr>
<tr>
<td>2004/2005</td>
<td>5/7</td>
</tr>
</tbody>
</table>

Note This option treats all expenditure undertaken within the program and the pre-program years on an equal basis. Actual expenditure each year is reduced by approximately 29% to ensure overall eligible expenditure generating grants over the 7 year period does not exceed that which would have been eligible expenditure generating grants in the 5 year program period.

Option (3) Pro rata in the pre-program years and pro rata in the program years

<table>
<thead>
<tr>
<th>Pre-program/Program Year</th>
<th>Proportion of Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998/1999</td>
<td>1/2</td>
</tr>
<tr>
<td>1999/2000</td>
<td>1/2</td>
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<td>2003/2004</td>
<td>4/5</td>
</tr>
<tr>
<td>2004/2005</td>
<td>4/5</td>
</tr>
</tbody>
</table>

Note This option, in effect, averages actual expenditure in the pre-program years by reducing the value of actual expenditure in each pre-program year by 50%. The value of actual expenditure in each of the program years is reduced by 20% to accommodate the averaging in the pre-program years. This results in eligible expenditure generating grants which are the equivalent of grants in the 5 year program period.
Schedule 4 Modulation factor

(Section 75)

For subsection 75 (1), the modulation factor for a program year is:

\[
\frac{700 - A - RAP}{(0.4 \times B) + (0.9 \times C) + (0.2 \times D)}
\]

where:

\( A \) = the sum of the amounts of grants for which claimant entities have been assessed to be eligible in accordance with Subdivisions 5.2.1 and 5.2.2 for all preceding program years.

\( B \) = the sum of:

(a) the estimated total eligible expenditure for Type 1 and Type 4 grants for the program year and all succeeding program years; and

(b) the amounts of Type 1 and Type 4 grants for which claimant entities are likely to be assessed to be eligible in accordance with Subdivisions 5.2.1 and 5.2.2 for the immediately preceding program year.

\( C \) = the sum of:

(a) the estimated total eligible expenditure for Type 2 grants for the program year and all succeeding program years; and

(b) the amounts of Type 2 grants for which claimant entities are likely to be assessed to be eligible in accordance with Subdivision 5.2.1 for the immediately preceding program year.

\( D \) = the sum of:

(a) the estimated total eligible expenditure for Type 5 grants for the program year and all succeeding program years; and

(b) the amounts of Type 5 grants for which claimant entities are likely to be assessed to be eligible in accordance with Subdivision 5.2.2 for the immediately preceding program year.

\( RAP \) = the sum of all Regional Assistance Program supplementation payments.

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