Textile, Clothing and Footwear Strategic Investment Program Scheme Amendment 2001 (No. 1)

I, NICHOLAS HUGH MINCHIN, Minister for Industry, Science and Resources, make this instrument under sections 8 and 34 of the Textile, Clothing and Footwear Strategic Investment Program Act 1999.

Dated 26th February 2001

[Signature]

Minister for Industry, Science and Resources

1 Name of instrument

This instrument is the Textile, Clothing and Footwear Strategic Investment Program Scheme Amendment 2001 (No. 1).

2 Commencement

This instrument commences on gazetted.

3 Amendment of Textile, Clothing and Footwear Strategic Investment Program Scheme 1999

Schedule 1 amends the Textile, Clothing and Footwear Strategic Investment Program Scheme 1999.
Schedule 1 Amendments

(Section 3)

[1] **Section 3, after definition of eligible expenditure**

*insert*

eligible start-up investment amount has the meaning given by subsection 85 (3).

eligible start-up period has the meaning given by subsection 85 (3).


*insert*

(2B) For paragraph (1) (a), a manufacturing activity of a kind mentioned in item 4 of Part A, or in Part B or C, of Schedule 1 may be carried on by the entity on a fee or commission basis, using client-supplied materials or materials purchased or transferred in from other entities.

[3] **Subsection 9 (3)**

*omits*

Part A to

*insert*

Part A, or in Part B or C, of

[4] **Section 10**

*substitute*

10 References to an entity

In the Scheme, unless the contrary intention appears, a reference to an entity, in relation to the doing of anything by the entity for the purposes of the Scheme, does not include a reference to an agent of the entity, except where:

(a) the entity is a body corporate; and

(b) the agent is a director or other officer of the body corporate, or an employee of the body corporate having management responsibility.
Paragraph 15 (7) (a) before is taken

insert subject to paragraph (aa).

After paragraph 15 (7) (a) insert

(aa) is limited to expenditure necessary for the efficient housing and operation of new TCF plant or equipment mentioned in paragraph 14 (1) (a); and

Section 36, heading

substitute

36 Election of pro rata and method of determination options for Type 1 grant

After subsection 36 (1) insert

(1A) If the entity elects that Option 1 is to apply to the entity, the entity may also elect that the method of determination of the entity’s entitlement to Type 1 grants set out in section 77A is to apply to the entity.

Subsection 36 (2) after subsection (1) insert or (1A)

Subsection 36 (3) substitute

(3) The entity must notify the Secretary in writing of an election under subsection (1A) before the entity makes a claim.

*omit*

[12] Subsection 40 (4), at the foot

*insert*

*Note* Part 5A deals with the transfer of registration.

[13] Subsection 44 (3)

*omit*

28 days after the application is made

*insert*

the decision period

[14] After subsection 44 (4)

*insert*

(5) In subsection (3):

*decision period*, in relation to an application, means:

(a) if, within the period of 28 days commencing on the day when the application is received, the Secretary requests further information, or a further application, under section 37 — the period of 28 days commencing on the day when the further information or application is received; or

(b) in any other case — the period of 28 days commencing on the day when the application is received.

[15] After subsection 52 (3)

*insert*

(3A) An entity that is carrying on an eligible TCF activity mentioned in paragraph 5 (1) (b) 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) (d) 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) (b) for the pre-program year or program year.
[16] After subsection 67 (1)

insert

(1A) For the purpose of working out the period of 60 days mentioned in subsection (1), if a claim that, under subsection 54 (1) or section 55, must be made before 1 July in a particular year is received before 1 April in the year preceding that year, the claim is taken to have been received on 1 April in the year preceding that year.

[17] Subsection 75 (1)

substitute

(1) The modulation factor for a program year (being the 2000/2001 program year together with the pre-program years) is 1.

(1A) The modulation factor for the 2001/2002 program year or a subsequent program year is worked out in accordance with the formula set out in Schedule 4.

[18] Subsection 75 (3), definition of program year, paragraph (a)

substitute

(a) the 2000/2001 program year together with the pre-program years;

[19] After subsection 76 (3)

insert

(4) However, if the claim relates to eligible expenditure by the entity during an eligible start-up period of the entity, the request must be accompanied by:

(a) a statement of the total of the eligible start-up investment amounts of the entity for each of the income years 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 of the eligible start-up investment amounts.

[20] After subsection 77 (4)

insert

(5) This section does not apply to an entity in respect of a claim for a Type 1 grant if section 77A applies to the entity.
[21] After section 77

insert

77A Alternative determination of entitlement — Type 1 grants

(1) This section applies to an entity if:
   (a) the entity:
      (i) makes a claim for a Type 1 grant in respect of a pre-program year and the 2000/2001 program year, or a subsequent program year; and
      (ii) requests the Secretary, under section 76, to determine whether the entity is entitled to a grant; and
      (iii) has notified the Secretary, under subsection 36 (3), that the method of determination of the entity’s entitlement to Type 1 grants set out in this section is to apply to the entity; and
   (b) the Secretary has decided, in accordance with Subdivision 5.2.1, that the entity is eligible for a Type 1 grant of a particular amount (in this section called the eligible grant amount) in respect of a pre-program year and the 2000/2001 program year, or a subsequent program year.

(2) Subject to subsections (3) and (4), the Secretary must determine that an entity to which this section applies is entitled to be paid a Type 1 grant, for a pre-program year or program year in the first column of the following table, the corresponding amount in the second column of the table:

<table>
<thead>
<tr>
<th>Pre-program year/program year to which claim relates</th>
<th>Amount of grant</th>
</tr>
</thead>
</table>
| 1998/1999 pre-program year; and/or 1999/2000 pre-program year; and 2000/2001 program year | The sum of:
  • the eligible grant amount (if any) for the 1998/1999 pre-program year; and
  • one half of the eligible grant amount (if any) for the 1999/2000 pre-program year; and
  • one third of the eligible grant amount for the 2000/2001 program year |
<table>
<thead>
<tr>
<th>Pre-program year/program year to which claim relates</th>
<th>Amount of grant</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001/2002 program year</td>
<td>The sum of:</td>
</tr>
<tr>
<td></td>
<td>• one half of the eligible grant amount (if any) for the 1999/2000 pre-program year; and</td>
</tr>
<tr>
<td></td>
<td>• one third of the eligible grant amount for the 2000/2001 program year; and</td>
</tr>
<tr>
<td></td>
<td>• one third of the eligible grant amount for the 2001/2002 program year</td>
</tr>
<tr>
<td>2002/2003 program year</td>
<td>The sum of:</td>
</tr>
<tr>
<td></td>
<td>• one third of the eligible grant amount for the 2000/2001 program year; and</td>
</tr>
<tr>
<td></td>
<td>• one third of the eligible grant amount for the 2001/2002 program year; and</td>
</tr>
<tr>
<td></td>
<td>• one third of the eligible grant amount for the 2002/2003 program year</td>
</tr>
<tr>
<td>2003/2004 program year</td>
<td>The sum of:</td>
</tr>
<tr>
<td></td>
<td>• one third of the eligible grant amount for the 2001/2002 program year; and</td>
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<tr>
<td></td>
<td>• one third of the eligible grant amount for the 2002/2003 program year; and</td>
</tr>
<tr>
<td></td>
<td>• one half of the eligible grant amount for the 2003/2004 program year</td>
</tr>
<tr>
<td>2004/2005 program year</td>
<td>The sum of:</td>
</tr>
<tr>
<td></td>
<td>• one third of the eligible grant amount for the 2002/2003 program year; and</td>
</tr>
<tr>
<td></td>
<td>• one half of the eligible grant amount for the 2003/2004 program year; and</td>
</tr>
<tr>
<td></td>
<td>• the eligible grant amount for the 2004/2005 program year</td>
</tr>
</tbody>
</table>

(3) In determining whether the entity is entitled to be paid a grant of a amount mentioned in subsection (2), 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 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.
After Part 5

insert

Part 5A  Transfer of registration

86A  Interpretation for Part 5A

In this Part, unless the contrary intention appears:

*business*, of an entity, includes a part of the business of the entity.

*program year* includes a pre-program year.

86B  Transfer of registration generally

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.

86C  Transfer of registration on transfer of business

(1) This section applies if an entity (the *transferor entity*) that is registered for a program year transfers the business of the entity to another entity (the *transferee entity*).

(2) The transferee entity may apply to the Secretary for a transfer of registration for the program year.

(3) An application must:

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

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

(c) include the following:

(i) details of the relationship (if any) between the transferor entity and the transferee entity;

(ii) a business case for the transfer of the business;

(iii) a statement of strategic business intent of the transferee entity, of the kind mentioned in section 34, incorporating the transferred business;

(iv) the date, or proposed date, of effect of the transfer of the business.

(4) The Secretary may:

(a) approve the transfer of registration, with or without conditions; or

(b) refuse to approve the transfer of registration.
(5) However, the Secretary must not approve a transfer of registration if:
(a) the business transferred does not include the whole of the eligible TCF activity or activities carried on by the transferor entity; or
(b) there are reasonable grounds for believing that the primary purpose of the transfer of the business is to obtain an entitlement to a grant under the Scheme; or
(c) the amount of a grant to which the transferee entity would be entitled in respect of eligible expenditure incurred by the transferor entity before the transfer would be more than the amount of the grant to which the transferor entity would have been entitled if the business had not been transferred; or
(d) the transferee entity does not carry on, or does not propose to carry on, the eligible TCF activity or activities of the transferor entity; or
(e) the transferee entity does not propose to incur eligible expenditure in a subsequent program year; or
(f) the business transferred includes a product development activity in respect of which the transferor entity has incurred eligible expenditure in obtaining industrial property rights, and those industrial property rights are not transferred to the transferee entity.

(6) Subsection (5) does not limit the discretion of the Secretary under subsection (4) to refuse to approve a transfer of registration on other grounds.

(7) If the Secretary refuses to approve a transfer of registration, or approves the transfer of registration subject to conditions, the Secretary must give written notice to the transferee entity of:
(a) the decision; and
(b) the reasons for the decision.

(8) If the Secretary approves the transfer of registration, the Secretary must notify the transferee of the approval and amend the register maintained under section 46 accordingly.

86D **Effect of transfer of registration**

(1) This section applies, subject to sections 86E, 86F and 86G, if a transfer of registration for a program year is approved under section 86C.

(2) On approval of the transfer of registration, the transferor entity ceases to have any right or entitlement under the Scheme in respect of eligible expenditure incurred in the program year.
(3) For the purposes of the Scheme:
   (a) any eligible TCF activity carried on by the transferor entity before the transfer of the business in the program year is taken to have been carried on by the transferee entity; and
   (b) any eligible expenditure incurred by the transferor entity before the transfer of the business in the program year in relation to an eligible TCF activity mentioned in paragraph (a) is taken to have been incurred by the transferee entity; and
   (c) subject to subsection (4), anything done by the transferor entity before the transfer of registration for the purposes of the Scheme (including any step taken for the renewal of registration, for making a claim for a grant or for the determination of an entitlement to a grant) is taken to have been done by the transferee entity; and
   (d) anything:
      (i) that has not been done before the transfer of registration by the transferor entity for the purpose of making a claim for a grant for the program year to which the registration applies, or for the determination of an entitlement to a grant; and
      (ii) that could, but for the transfer of registration, have been done by the transferor entity on or after the day on which registration was transferred;
      may be done by the transferee entity.

(4) If the transferor entity has made an election under subsection 36 (1) or (1A), the transferee entity is taken to have made that election unless the Secretary approves in writing another election by the transferee entity.

(5) If the transferor entity has made a claim in respect of eligible expenditure incurred in the program year to which the transferred registration applies, the transferee entity is taken, for the purposes of Division 5.3, to be the claimant entity.

86E Status of activities and expenditure unchanged

(1) An activity that, if carried on by a transferor entity in the program year to which the transferred registration applies, is not an eligible TCF activity:
   (a) does not, by reason of the transfer of the business, become an eligible TCF activity for the program year; and
   (b) if carried on in the program year by the transferee entity, is taken not to be an eligible TCF activity for the program year.
(2) Expenditure that, if incurred by a transferor entity in the program year to which the transferred registration applies, is not eligible expenditure:
   (a) does not, by reason of the transfer of the business, become eligible expenditure for the program year; and
   (b) if incurred in the program year by a transferee entity, is taken not to be eligible expenditure for the program year.

(3) An activity that, if carried on by a transferee entity before the transfer of the business in the program year to which the transferred registration applies, is not an eligible TCF activity, does not, by reason of the transfer of the business, become an eligible TCF activity for the program year.

(4) Expenditure that, if incurred by a transferee entity in the program year to which the transferred registration applies, is not eligible expenditure does not, by reason of the transfer of the business, become eligible expenditure for the program year.

(5) For the avoidance of doubt, consideration paid by the transferee entity for the transfer of the business, or for any right or entitlement under the Scheme, is not eligible expenditure.

86F Treatment of value added

For sections 28 and 66 and Schedule 2, the total eligible TCF value added by a transferee entity for a program year in respect of which the registration is transferred is taken to be the sum of:

(a) the eligible TCF value added by the transferor entity for the program year or, if the transfer of the business occurred during the program year, for that part of the program year during which the business was owned by the transferor entity; and

(b) the eligible TCF value added (if any) by the transferee entity for the program year.

86G Treatment of total eligible revenue and total eligible start-up investment amounts

(1) For subsection 85 (1), the total eligible revenue for a transferee entity for an income year in respect of which the registration is transferred is taken to be the sum of:

(a) the total eligible revenue of the transferor entity for the income year or, if the transfer of the business occurred during the income year, for that part of the income year during which the business was owned by the transferor entity; and

(b) the total eligible revenue (if any) of the transferee entity for the income year.
(2) For subsection 85 (2), the total of the eligible start-up investment amounts for a transferee entity for an income year in respect of which the registration is transferred is taken to be the sum of:

(a) the eligible start-up investment amounts of the transferor entity for the income year or, if the transfer of the business occurred during the income year, for that part of the income year during which the business was owned by the transferor entity; and

(b) the eligible start-up investment amounts (if any) of the transferee entity for the income year.

[23] Schedule 1, Part A, item 4

omit

, whether in-house or on a fee or commission basis, using client supplied materials or materials purchased or transferred in from other manufacturing entities

[24] Schedule 2, clause 2, definition of turnover, subparagraph (a) (ii)

omit

Part A to

insert

Part A, or in Part B or C, of

[25] Schedule 4

omit

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

insert

For subsection 75 (1A), the modulation factor for a program year mentioned in that subsection

[26] Schedule 4, modulation factor

omit

700

insert

679
[27] Schedule 4, definition of B, paragraph (b)

*omit*
  amounts of

*insert*
  estimated total expenditure for

[28] Schedule 4, definition of C, paragraph (b)

*omit*
  amounts of

*insert*
  estimated total expenditure for

[29] Schedule 4, definition of D, paragraph (b)

*omit*
  amounts of

*insert*
  estimated total expenditure for