Explanatory Statement

Textile, Clothing and Footwear Strategic Investment Program Scheme Amendment 2005 (No. 1)

General Outline

The Textile, Clothing and Footwear Strategic Investment Program Scheme 1999 (“the TCF (SIP) Scheme”) provides for the making of grants in connection with, or incidental to:

- the manufacture in Australia of eligible TCF products; and
- the design in Australia, for manufacture in Australia, of eligible TCF products some or all of which are intended to be sold in Australia.

This amendment will clarify provisions in relation to the extension of time for registering under the Scheme and for lodging a claim for a grant under the Scheme. It will also make it clear that the threshold amount of eligible expenditure under the Scheme is an accumulated amount over the life of the Scheme and is not on an annual basis. Also, the amendment will make it clear that determinations can be revoked and remade in certain circumstances.

Consequential to the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Act 2004, the amendment introduces provisions that make it clear that payment of a grant or regular advance is subject to conditions, that documents must be retained and that entities may be subject to post-grant payment compliance monitoring.

Legislative Authority

The legislative basis for the TCF (SIP) Scheme and variations thereto is the Textile, Clothing and Footwear Strategic Investment Program Act 1999.

Financial Implications

The total amount of funding available for the Textile, Clothing and Footwear Strategic Investment Program Act 1999 will remain unchanged.

Notes on Sections to be Amended

Section 1 Name of instrument

This prescribes the name of the instrument as the Textile, Clothing and Footwear Strategic Investment Program Scheme Amendment 2005.

Section 2 Commencement

Section 2 provides for the instrument to commence on the day after it is registered in accordance with the Legislative Instruments Act 2003.
Section 3 Amendment of Textile, Clothing and Footwear Strategic Investment Program Scheme 1999

This is the formal provision that provides for the amendment of the TCF (SIP) Scheme as outlined in Schedule 1.

Schedule 1 Amendments

1. Section 43, Extension of time for registration or renewal

Subparagraph (4) is added to provide that the Secretary, regardless of the circumstances, may not extend the period for registration or renewal of registration beyond the end of the program year for which registration or renewal of registration is sought. Subparagraph (5) clarifies that failure to apply for registration or renewal of registration on time due to oversight or ignorance is not to be regarded as an exceptional circumstance for the purpose of subsection (3).

2. Section 51S, Threshold expenditure for regular advances of Type 1, Type 2 and Type 3 grants – program years

Subsubparagraph (b) is substituted to clarify in relation to the threshold amount that the total amount of eligible expenditure for regular advances of Type 1 and Type 2 grants includes amounts incurred by the entity in previous program years and in respect of which the entity has made a claim.

3. Section 59, Extension of time for making claim

Subparagraph (4) is added to provide that the Secretary must not agree to extend the period for lodging a claim if that request is made after the end of the relevant financial year. Subparagraph (5) is added to provide that, regardless of the circumstances, the Secretary must not provide an extension of time for an entity in relation to a claim for a previous program year for which the entity has already made a claim under the Scheme. Subparagraph (6) clarifies that failure to lodge a claim on time due to oversight or ignorance is not to be regarded as an exceptional circumstance for the purpose of subsection (3).

4. Section 79, Threshold expenditure for Type 1, Type 2 and Type 3 grants

Sub subparagraph 79(2)(b) is amended to clarify in relation to the threshold amount that the total amount of eligible expenditure for Type 1 and Type 2 grants includes amounts incurred by the entity in previous program years and in respect of which the entity has made a claim.

5. Section 81, Determination and payment of Type 1, Type 2 and Type 3 grants

Subparagraphs (6A) is added to provide that if a claimant entity has breached a condition in relation to a regular advance of a grant, the Secretary may reduce the amount of the grant payable to the entity by the amount (if any) to which, because of the breach, the entity would not otherwise have been entitled as part of the regular advance. Subparagraph (6B) provides that a
determination under Subdivision 5.3.1 is revocable under section 81A and may be remade under that section.

Subparagraph (8) is added to provide that if a claimant is not eligible, in accordance with Subdivision 5.2.1, for a grant of an amount for a program year, the Secretary must not determine that the claimant is entitled to be paid the amount for the program year or pay a grant to the claimant of the amount for the program year.

6. Section 81A, Revocation and remaking determinations etc

Section 81A is added to make clear that determinations can be revoked and remade in certain circumstances.

Subparagraph (1) provides that if a determination is made in relation to an entity and the amount determined, or paid to the entity under the determination, is not the amount (if any) to which the entity is entitled under the Scheme then, in any of the circumstances mentioned in subsection (2), the Secretary may revoke the determination and, if appropriate, make a revised determination in its place.

Subparagraph (2) provides for the purposes of subparagraph (1) that the relevant circumstances are:
(a) the determination or payment contains or relies on a clerical error;
(b) the determination or payment was based wholly or in part on incorrect information;
(c) the determination or payment was based wholly or in part on a misinterpretation of a provision of the Act or Scheme by a self-assessing entity;
(d) the determination or payment is contrary to a provision of the Act or Scheme.

Subparagraph (3) provides that if the Secretary revokes a determination in relation to which a grant has been paid then, in a case in which a revised determination is not made under subparagraph (1), the amount of the grant must be repaid by the entity and may be recovered as a scheme debt. Also, in a case in which a revised determination is made under subsection (1) and the amount of the grant under the revised determination is less than the original grant, the difference between the original grant and the revised grant must be repaid by the entity and may be recovered as a scheme debt.

7. Section 82, Request for determination of a Type 4 or Type 5 grant

Subparagraph (6) is added to provide that if a claimant entity has breached a condition in relation to a regular advance of a grant, the Secretary may reduce the amount of the grant payable to the entity by the amount (if any) to which, because of the breach, the entity would not otherwise have been entitled as part of the regular advance. Subparagraph (7) is added to provide that a determination under Subdivision 5.3.2 is revocable under section 82A and may be remade under that section.

Subparagraph (8) is added to provide that if a claimant is not eligible, in accordance with Subdivision 5.2.2, for a grant of an amount for a program year, the Secretary must not determine that the claimant is entitled to be paid the amount for the program year or pay a grant to the claimant of the amount for the program year.
8. **Section 82A, Revocation and remaking determinations etc**

Section 82A is added to make clear that determinations can be revoked and remade in certain circumstances.

Subparagraph (1) provides that if a determination is made in relation to an entity and the amount determined, or paid to the entity under the determination, is not the amount (if any) to which the entity is entitled under the Scheme then, in any of the circumstances mentioned in subsection (2), the Minister may revoke the determination and, if appropriate, make a revised determination in its place.

Subparagraph (2) provides for the purposes of subparagraph (1) that the relevant circumstances are:

(a) the determination or payment contains or relies on a clerical error;
(b) the determination or payment was based wholly or in part on incorrect information;
(c) the determination or payment was based wholly or in part on a misinterpretation of a provision of the Act or Scheme by a self-assessing entity;
(d) the determination or payment is contrary to a provision of the Act or Scheme.

Subparagraph (3) provides that if the Minister revokes a determination in relation to which a grant has been paid then, in a case in which a revised determination is not made under subparagraph (1), the amount of the grant must be repaid by the entity and may be recovered as a scheme debt. Also, in a case in which a revised determination is made under subsection (1) and the amount of the grant under the revised determination is less than the original grant, the difference between the original grant and the revised grant must be repaid by the entity and may be recovered as a scheme debt.

9. **Section 96, Statutory conditions**

Section 96 is added to provide that the payment of a grant, or regular advance of a grant, to an entity is subject also to the condition that the entity complies, or has complied, with all relevant provisions of the Act and the Scheme and that each grant and regular advance of a grant under the Scheme is subject to the conditions set out in section 18A of the Act.

10. **Section 97, Condition – document retention**

Section 97 is added to provide that the payment of a grant, or regular advance of a grant, to an entity is subject to the condition that the entity retain each of the documents mentioned in the section for not less than 5 years from the date on which the grant, or regular advance of a grant, is paid to the entity.

Subparagraph (2) provides for the purposes of subparagraph (1) that the documents are:

(a) each document that the entity is, under the Scheme, required to prepare or obtain in relation to the grant, or regular advance of a grant, including (but not limited to) each such document prepared or obtained in relation to:
   (i) the registration of the entity under the Scheme; and
   (ii) a claim for a grant or a request for a regular advance of a grant; and
(iii) a request for a determination and payment of a claim; and
(b) any record relied upon to prepare such a document.

11. Section 98, Post-payment compliance monitoring

Section 98 is added to provide that if an entity receives a grant, the entity may be subject to post-grant payment compliance monitoring.