

Textile, Clothing and Footwear Investment and Innovation Programs Act 1999

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**About this compilation**

**This compilation**

This is a compilation of the *Textile, Clothing and Footwear Investment and Innovation Programs Act 1999* that shows the text of the law as amended and in force on 29 December 2018 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act about the Textile, Clothing and Footwear Investment and Innovation Programs, and for other purposes

Part 1—Introduction

1 Short title

This Act may be cited as the *Textile, Clothing and Footwear Investment and Innovation Programs Act 1999*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Simplified outline

The following is a simplified outline of this Act:

• This Act provides a framework for the implementation of the Textile, Clothing and Footwear Strategic Investment and Innovation Programs.

• There are 2 schemes under the programs.

• The TCF Post‑2005 (SIP) scheme provides for 2 grants in respect of expenditure incurred in the 2005‑2006 to 2009‑2010 income years. Part 3A deals with this scheme.

• The Clothing and Household Textile (BIC) scheme provides for innovation grants in respect of expenditure incurred in the 2010‑2011 to 2014‑2015 income years. Part 3C deals with this scheme.

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

4 Definitions

In this Act:

***Australia***, when used in a geographical sense, includes all the external Territories.

***authorised Commonwealth contractor*** has the meaning given by section 52.

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

***clothing/finished textile expenditure*** means expenditure in connection with, or incidental to, the manufacture in Australia, or the design in Australia, of products that, under a TCF scheme, are taken to be:

(a) clothing products; or

(b) finished textile products.

***designated industry program*** means a program or scheme that is:

(a) administered by the Commonwealth; and

(b) specified in the regulations.

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

***importation into Australia*** has the same meaning as in section 50 of the *Customs Act 1901*.

***income year*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***manufacture*** includes make a physical or chemical transformation or conversion.

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

***scheme debt*** means:

(a) so much of an amount paid, or purportedly paid, to an entity by way of a grant under a TCF scheme as represents an overpayment; or

(b) an amount that is payable as mentioned in subsection 37V(2) or 37ZZE(2) or (3) (advances); or

(c) an amount that is recoverable as mentioned in section 43 (conditional grants).

***Secretary*** means the Secretary of the Department.

***strategic business plan*** means a strategic business plan that incorporates a strategic investment plan.

***TCF Post‑2005 (SIP) scheme*** means the scheme in force under section 37C.

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

(a) the TCF Post‑2005 (SIP) scheme; or

(b) the Clothing and Household Textile (BIC) scheme.

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

5 Continuity of partnerships

For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

6 Crown to be bound

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to be prosecuted for an offence.

7 External Territories

This Act extends to all the external Territories.

Part 3A—TCF Post‑2005 (SIP) scheme

Division 1—Preliminary

37A Object of Part and simplified outline of Part

Object

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

Simplified outline

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

• The Minister must formulate a scheme (the ***TCF Post‑2005 (SIP) scheme***) for the making of grants in connection with the design and manufacture, in Australia, of eligible TCF products.

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

• The TCF Post‑2005 (SIP) scheme will provide for 2 types of grants:

(a) grants in respect of TCF capital investment expenditure on new TCF plant or buildings, brand support for TCF products or non‑production related information technology; and

(b) grants in respect of TCF research and development expenditure.

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

• Grants under the TCF Post‑2005 (SIP) scheme are to be made in arrears.

• Entities who wish to obtain grants under the TCF Post‑2005 (SIP) scheme will be required to register under the scheme and to submit strategic business plans and accounts.

37B Definitions

In this Part:

***authorised officer*** means a person appointed under subsection 37P(6) as an authorised officer of the Department.

***claim*** means a claim for a grant.

***grant*** means a grant under the TCF Post‑2005 (SIP) scheme.

***leather/technical textile expenditure*** means expenditure in connection with, or incidental to, the manufacture in Australia, or the design in Australia, of products that, under the TCF Post‑2005 (SIP) scheme, are taken to be:

(a) leather products; or

(b) technical textile products.

Division 2—Formulation of TCF Post‑2005 (SIP) scheme

37C TCF Post‑2005 (SIP) scheme

The Minister must, by writing, formulate a scheme (the ***TCF Post‑2005 (SIP) scheme***) for the making of grants in connection with, or incidental to, the following:

(a) the manufacture in Australia of products that, under the scheme, are taken to be eligible TCF products;

(b) the design in Australia, for manufacture in Australia, of products:

(i) that, under the scheme, are taken to be eligible TCF products; and

(ii) some or all of which are intended to be sold in Australia;

(c) the design in Australia, for manufacture outside Australia, of products:

(i) that, under the scheme, are taken to be eligible TCF products; and

(ii) some or all of which are intended to be sold in Australia;

where the importation into Australia of some or all of the products is or will be covered by a designated industry program.

37D Caps

The TCF Post‑2005 (SIP) scheme must make provision for ensuring that the total of the grants (including advances on account of grants) paid under the scheme does not exceed $487,500,000.

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

Division 3—General policy objectives

37E General policy objectives

The TCF Post‑2005 (SIP) scheme must be directed towards ensuring the achievement of the policy objectives set out in this Division.

37F 2 types of grants

It is a policy objective for the TCF Post‑2005 (SIP) scheme that there are to be 2 types of grants, as follows:

(a) the first type of grants are to be known as ***grants in respect of TCF capital investment expenditure***;

(b) the second type of grants are to be known as ***grants in respect of TCF research and development expenditure***.

37G Provisions relating to grants in respect of TCF capital investment expenditure

(1) It is a policy objective for the TCF Post‑2005 (SIP) scheme that grants in respect of TCF capital investment expenditure are only to be made as set out in this section.

New TCF plant/building expenditure

(2) The grants are to be made in respect of expenditure that:

(a) under the scheme, is taken to be new TCF plant/building expenditure; and

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

(3) It is a policy objective for the scheme that expenditure is only to be taken to be new TCF plant/building expenditure under the scheme if the expenditure is of the kind for which, at the commencement of this Part, a Type 1 grant could be made under the TCF (SIP) scheme.

Brand support for TCF products expenditure

(4) The grants are to be made in respect of expenditure that:

(a) under the scheme, is taken to be brand support for TCF products expenditure; and

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

Non‑production related information technology expenditure

(5) The grants are to be made in respect of expenditure that:

(a) under the scheme, is taken to be non‑production related information technology expenditure; and

(b) is incurred by an entity during any of the 2005‑2006 to 2009‑2010 income years of the entity; and

(c) is also clothing/finished textile expenditure.

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

37H Provisions relating to grants in respect of TCF research and development expenditure

(1) It is a policy objective for the TCF Post‑2005 (SIP) scheme that grants in respect of TCF research and development expenditure are only to be made in respect of expenditure that:

(a) under the scheme, is taken to be TCF research and development expenditure; and

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

(2) It is a policy objective for the scheme that:

(a) leather/technical textile expenditure is not to be taken, under the scheme, to be expenditure on TCF research and development; and

(b) expenditure in obtaining industrial property rights may be taken, under the scheme, to be expenditure on TCF research and development.

Note: For ***leather/technical textile expenditure***, see section 37B.

37J Grants to be made in arrears

It is a policy objective for the TCF Post‑2005 (SIP) scheme that grants must not be made to an entity in respect of expenditure incurred by the entity during an income year of the entity unless the entity makes a claim after the end of the income year.

37K Grants cap based on eligible revenue and eligible start‑up investment amount

Cap based on eligible revenue

(1) It is a policy objective for the TCF Post‑2005 (SIP) scheme that there be a cap on the total of the grants that become payable to an entity during an income year (the ***claim year***) of the entity in respect of expenditure incurred by the entity otherwise than during a period that, under the scheme, is taken to be an eligible start‑up period of the entity.

(2) The total of the grants must not exceed 5% of the amount that, under the scheme, is taken to be the total eligible revenue derived by the entity, during the income year of the entity before the claim year, from sales of products that, under the scheme, are taken to be eligible TCF products.

Cap based on eligible start‑up investment amount

(3) It is a policy objective for the TCF Post‑2005 (SIP) scheme that there be a cap on the total of the grants that become payable to an entity during an income year (the ***claim year***) of the entity and any income years of the entity that are earlier than the claim year in respect of expenditure incurred by the entity during a period that, under the scheme, is taken to be an eligible start‑up period of the entity.

(4) The total of the grants must not exceed 15% of the amount that, under the scheme, is taken to be the total of the eligible start‑up investment amounts of the entity for each of the income years of the entity that is earlier than the claim year.

When grant becomes payable

(5) For the purposes of this section, a grant becomes payable to an entity when a determination is made under the scheme that the entity is entitled to be paid the grant.

Division 4—Registration for the purposes of the scheme

37L Registration for the purposes of the scheme

Registration requirements

(1) The TCF Post‑2005 (SIP) scheme may impose requirements relating to the registration of entities.

(2) The requirements may include (but are not limited to) any or all of the following requirements:

(a) a requirement that an entity must apply for registration;

(b) a requirement that an entity’s application for registration be accompanied by a statement issued by a specified person as to the entity’s future financial viability;

(c) a requirement that an entity’s application for registration be accompanied by specified information about the entity (which may include statistical information);

(d) a requirement that an entity’s application for registration be accompanied by such a fee as is ascertained in accordance with the scheme.

Consequences of non‑compliance with registration requirements

(3) The scheme may provide for one or more of the following consequences for an entity that does not comply with a particular requirement relating to registration:

(a) the consequence that the entity is not eligible for a grant;

(b) the consequence that the entity’s eligibility for a grant is subject to restriction or reduction;

(c) the consequence that the time of payment of a grant to the entity is deferred.

Division 5—Strategic business plans and accounts

37M Strategic business plans

The TCF Post‑2005 (SIP) scheme must provide that an entity is not eligible for a grant unless the entity has complied with such requirements (if any) as are imposed by the scheme in relation to the content and submission of:

(a) strategic business plans; and

(b) variations of strategic business plans.

37N Accounts

The TCF Post‑2005 (SIP) scheme may provide that an entity ascertained in accordance with the scheme is not eligible for a grant unless the entity has complied with such requirements as are imposed by the scheme in relation to:

(a) the submission of audited accounts and audited financial statements; or

(b) the submission of unaudited accounts and unaudited financial statements.

Division 6—Conditional grants

37P Conditional grants

(1) The TCF Post‑2005 (SIP) scheme may make provision for and in relation to the payment of grants subject to conditions (whether conditions precedent or conditions subsequent).

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

Condition—compliance with information gathering notice

(2) A grant paid to an entity is subject to the condition that the entity comply with any notice given to the entity under section 38.

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

Condition—no false or misleading statements

(3) A grant paid to an entity is subject to the condition that:

(a) a false or misleading statement has not been made by, or on behalf of, the entity in connection with a claim for the grant; and

(b) false or misleading information or evidence is not given by, or on behalf of, the entity in compliance or purported compliance with section 38; and

(c) a false or misleading document is not produced by, or on behalf of, the entity in compliance or purported compliance with section 38.

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

Condition—entry to premises etc. to monitor compliance with other conditions

(4) A grant paid to an entity is subject to the condition that in relation to the following premises:

(a) business premises specified in the notice that is given to the entity notifying the entity that the entity is entitled to be paid the grant;

(b) business premises specified in a later notice given to the entity by the Secretary under subsection (5);

the entity:

(c) allow authorised officers of the Department, and any authorised employees of an authorised Commonwealth contractor accompanying those officers, access to the premises at any reasonable time of a business day for the purpose of monitoring compliance with other conditions that the grant is subject to; and

(d) allow authorised officers of the Department during that access to inspect and search the premises and any thing on the premises for the purpose of that monitoring; and

(e) allow authorised officers of the Department to operate electronic equipment at the premises to see whether documents in electronic form relevant to that monitoring are accessible by doing so; and

Note: See also sections 37Q to 37T (which contain provisions relating to the operation of electronic equipment at the premises).

(f) allow authorised officers of the Department to make copies of any documents in hard copy form found on the premises that are relevant to that monitoring; and

(g) provide authorised officers of the Department with all reasonable facilities and assistance in connection with that monitoring.

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

Secretary’s powers

(5) The Secretary may, by written notice given to an entity, specify business premises for the purposes of paragraph (4)(b).

(6) The Secretary may, by writing, appoint an APS employee in the Department to be an authorised officer of the Department for the purposes of this Division. The Secretary may do so only if the Secretary is satisfied that the employee has suitable qualifications for such an appointment.

(7) The Secretary may, by writing, appoint an employee of an authorised Commonwealth contractor to be an authorised employee of the contractor for the purposes of this Division. The Secretary may do so only if the Secretary is satisfied that the employee has suitable qualifications for such an appointment.

37Q Operation of electronic equipment by authorised officers

(1) If:

(a) an authorised officer has obtained access to premises for the purpose of monitoring compliance with the conditions of a grant; and

(b) the officer finds that documents in electronic form, relevant to that monitoring, are accessible by operating electronic equipment at the premises;

the officer may do only 1 of 2 things.

Removal of documents

(2) One thing the officer may do is operate the equipment or other facilities at the premises to put the documents in hard copy form and remove the documents so produced.

Removal of disk, tape or other storage device

(3) The other thing the officer may do is operate the equipment or other facilities at the premises to transfer the documents to a disk, tape or other storage device that:

(a) is brought to the premises for the exercise of the power; or

(b) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

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

37R Operation of electronic equipment by experts

(1) This section applies if:

(a) an authorised officer has obtained access to premises for the purpose of monitoring compliance with the conditions of a grant; and

(b) the officer believes on reasonable grounds that:

(i) documents in electronic form, relevant to that monitoring, may be accessible by operating electronic equipment at the premises; and

(ii) expert assistance is required to operate the equipment; and

(iii) an authorised employee (the ***expert***) of an authorised Commonwealth contractor accompanying the officer in relation to that monitoring has the expertise to operate the equipment.

Expert may operate equipment

(2) The expert may operate the equipment to determine whether such documents are accessible. If they are, the expert may do only 1 of 2 things.

Produce documents in hard copy form

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

Transfer documents to a disk, tape or other storage device

(4) The other thing the expert may do is operate the equipment or other facilities at the premises to transfer the documents to a disk, tape or other storage device that:

(a) is brought to the premises for the exercise of the power; or

(b) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises.

Removal

(5) The authorised officer may then remove the documents in hard copy form or remove the disk, tape or other storage device.

37S Pre‑condition to operating electronic equipment

A person may operate electronic equipment at premises as mentioned in this Division only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

37T Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of electronic equipment being operated as mentioned in section 37P, 37Q or 37R:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier’s employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1):

***damage***, in relation to data, includes damage by erasure of data or addition of other data.

37U Identity cards

(1) The Secretary must issue an identity card to an authorised officer.

Form of identity card

(2) The identity card must:

(a) be in the form prescribed by the regulations; and

(b) contain a recent photograph of the authorised officer.

Offence

(3) A person commits an offence if:

(a) the person has been issued with an identity card; and

(b) the person ceases to be an authorised officer; and

(c) the person does not return the identity card to the Secretary as soon as practicable.

Penalty: 1 penalty unit.

(4) An offence against subsection (3) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Card lost or destroyed

(5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Authorised officer must carry card

(6) An authorised officer must carry his or her identity card at all times when exercising powers as an authorised officer.

Authorised officer must produce card on request

(7) An authorised officer is not entitled to exercise any powers referred to in this Division in relation to premises if:

(a) the occupier of the premises has requested the officer to produce the officer’s identity card for inspection by the occupier; and

(b) the officer fails to comply with the request.

Division 7—Other matters relating to the scheme

37V Advances on account of grants

Advances

(1) The TCF Post‑2005 (SIP) scheme may provide for advances on account of grants that may become payable.

Repayments

(2) If:

(a) an entity receives an amount by way of an advance on account of a grant that may become payable to the entity; and

(b) that amount exceeds the amount of the grant (if any);

the entity is liable to pay to the Commonwealth the amount of the excess.

37W Scheme may confer administrative powers on the Secretary

The TCF Post‑2005 (SIP) scheme may make provision with respect to a matter by conferring on the Secretary a power to make a decision of an administrative character.

37X Reconsideration and review of decisions

(1) The TCF Post‑2005 (SIP) scheme must contain provisions for and in relation to the review of decisions of the Secretary under the scheme that affect an entity.

(2) The scheme must contain provisions under which:

(a) an entity who is affected by a decision (the ***initial decision***) of the Secretary under the scheme may, if dissatisfied with the decision, request the Secretary to reconsider the decision; and

(b) the Secretary is required to reconsider the initial decision and to confirm, revoke or vary the decision; and

(c) an application may be made to the Administrative Appeals Tribunal for review of an initial decision that has been confirmed or varied.

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

(3) If the scheme provides that the Secretary is taken to have confirmed an initial decision after a specified period, the scheme must specify the prescribed time for making an application for review of the initial decision as so confirmed for the purposes of section 29 of the *Administrative Appeals Tribunal Act 1975*.

37Y Guarantees relating to payment of scheme debts

The TCF Post‑2005 (SIP) scheme may provide that an entity (the ***eligible entity***) ascertained in accordance with the scheme:

(a) is not eligible for a grant; or

(b) is not entitled to request an advance on account of a grant;

unless another entity ascertained in accordance with the scheme gives a guarantee to the Commonwealth that any scheme debts owed by the eligible entity will be paid.

37Z Non‑arm’s length transactions

The TCF Post‑2005 (SIP) scheme may provide that, if an entity incurs expenditure under a transaction that is not at arm’s length, the amount of that expenditure is taken to be the amount that would reasonably have been expected to be incurred if the parties had been dealing with each other at arm’s length.

37ZA Grants and advances to be inalienable

The TCF Post‑2005 (SIP) scheme may provide for grants (including advances on account of grants) to be absolutely inalienable (whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise) except with the approval of the Secretary.

37ZB Other matters

The TCF Post‑2005 (SIP) scheme may make provision for and in relation to the following matters:

(a) the making of claims for grants;

(b) the times within which claims for grants are to be made;

(c) requiring that a claim made by an entity ascertained in accordance with the scheme be accompanied by an audited statement relating to specified activities;

(d) requiring that a claim made by an entity ascertained in accordance with the scheme be accompanied by an unaudited statement relating to specified activities;

(e) requiring that a claim be accompanied by such a fee as is ascertained in accordance with the scheme;

(f) the assessment of claims;

(g) the apportionment of expenditure;

(h) the adjustment of eligibility for grants in relation to the transfer of the whole or a part of a business, including (but not limited to):

(i) treating the transferee as if the transferee had incurred particular expenditure, had derived particular revenue and had done particular acts or things; and

(ii) treating the transferor as if the transferor had not incurred particular expenditure, had not derived particular revenue and had not done particular acts or things;

(i) the times when grants become payable.

37ZC Ancillary or incidental provisions

The TCF Post‑2005 (SIP) scheme may contain such ancillary or incidental provisions as the Minister considers appropriate.

37ZD Scheme‑making power not limited

Sections 37D to 37ZC do not, by implication, limit section 37C.

37ZE Fee must not amount to taxation

The amount of a fee under the TCF Post‑2005 (SIP) scheme must not be such as to amount to taxation.

37ZF Variation of scheme

(1) The TCF Post‑2005 (SIP) scheme may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) Subsection (1) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

37ZG Scheme to be a legislative instrument

An instrument under section 37C is a legislative instrument.

37ZH Appropriation

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

37ZI Publication of grant totals

As soon as practicable after the end of each of the 2006‑2007 to 2010‑2011 financial years, the Minister must publish the following information:

(a) the name of each entity paid a grant (including an advance on account of a grant) during the financial year;

(b) the total of the grants (including advances on account of grants) paid to the entity during the financial year.

Part 3B—TCF Small Business Program

37ZJ TCF Small Business Program

(1) The object of this section is to fund the TCF Small Business Program.

(2) The Department is responsible for administering the program. This includes (but is not limited to) responsibility for determining the following:

(a) the recipients of payments (including the eligibility criteria);

(b) the amounts of payments;

(c) the timing of payments;

(d) the terms and conditions of payments.

(3) The Consolidated Revenue Fund is appropriated for the purpose of payments under the program, to the extent of $25,000,000.

(4) In this section:

***TCF Small Business Program*** means the program administered by the Commonwealth and known as the TCF Small Business Program.

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

Division 1—Preliminary

37ZK Object of Part and simplified outline

Object

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

Simplified outline

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

• The Minister must formulate a scheme (the Clothing and Household Textile (BIC) scheme) for the making of grants in connection with the design and manufacture, in Australia, of eligible clothing and household textile products.

• The total of the grants paid under the Clothing and Household Textile (BIC) scheme must not exceed $112.5 million.

• The Clothing and Household Textile (BIC) scheme will provide for innovation grants in respect of clothing/finished textile expenditure.

• The Clothing and Household Textile (BIC) scheme will provide for the making of those grants in respect of expenditure incurred in the 2010‑2011 to 2014‑2015 income years.

• Grants under the Clothing and Household Textile (BIC) scheme are to be made in arrears.

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

37ZL Definitions

In this Part:

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

***innovation grant*** has the meaning given by section 37ZQ.

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

37ZM Clothing and Household Textile (BIC) scheme

The Minister must, by legislative instrument, formulate a scheme (the ***Clothing and Household Textile (BIC) scheme***) for the making of grants in connection with, or incidental to, the following:

(a) the manufacture in Australia of products that, under the scheme, are taken to be eligible clothing and household textile products;

(b) the design in Australia, for manufacture in Australia, of products:

(i) that, under the scheme, are taken to be eligible clothing and household textile products; and

(ii) some or all of which are intended to be sold in Australia;

(c) the design in Australia, for manufacture outside Australia, of products to which both of the following apply, if the importation into Australia of some or all of the products is or will be covered by a designated industry program:

(i) products that, under the scheme, are taken to be eligible clothing and household textile products;

(ii) products, some or all of which are intended to be sold in Australia.

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

37ZMA Consultation

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

37ZN Caps

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

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

37ZO Appropriation

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

Division 3—General policy objectives

37ZP General policy objectives

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

37ZQ Type of grants

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

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

37ZQA Commitment to Australian operations

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

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

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

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

(1) It is a policy objective for the Clothing and Household Textile (BIC) scheme that innovation grants are only to be made as set out in this section.

(2) Innovation grants are to be made in respect of expenditure that:

(a) under the scheme, is taken to be clothing/finished textile expenditure; and

(b) is incurred by an entity during any of the 2010‑2011 to 2014‑2015 income years of the entity.

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

37ZS Grants to be made in arrears

It is a policy objective for the Clothing and Household Textile (BIC) scheme that an innovation grant must not be made to an entity in respect of expenditure incurred by the entity during an income year of the entity unless the entity makes a claim for the innovation grant after the end of the income year.

37ZT Grants cap based on eligible revenue and eligible start‑up investment amount

Cap based on eligible revenue

(1) It is a policy objective for the Clothing and Household Textile (BIC) scheme that there be a cap on the total of the innovation grants that become payable to an entity during an income year (the ***claim year***) of the entity in respect of expenditure incurred by the entity otherwise than during a period that, under the scheme, is taken to be an eligible start‑up period of the entity.

(2) The total of the innovation grants must not exceed 5% of the amount that, under the scheme, is taken to be the total eligible revenue derived by the entity, during the income year of the entity before the claim year, from sales of products that, under the scheme are taken to be eligible clothing and household textile products.

Cap based on eligible start‑up investment amount

(3) It is a policy objective for the Clothing and Household Textile (BIC) scheme that there be a cap on the total of the innovation grants that become payable to an entity during an income year (the ***claim year***) of the entity and any income years of the entity that are earlier than the claim year in respect of expenditure incurred by the entity during a period that, under the scheme, is taken to be an eligible start‑up period of the entity.

(4) The total of the innovation grants must not exceed 15% of the amount that, under the scheme, is taken to be the total of the eligible start‑up investment amounts of the entity for each of the income years of the entity that is earlier than the claim year.

When grant becomes payable

(5) For the purposes of this section, an innovation grant becomes payable to an entity when a determination is made under the scheme that the entity is entitled to be paid the innovation grant.

Division 4—Registration for the purposes of the scheme

37ZU Registration for the purposes of the scheme

Registration requirements

(1) The Clothing and Household Textile (BIC) scheme may impose requirements relating to the registration of entities.

(2) The requirements may include (but are not limited to) any or all of the following requirements:

(a) a requirement that an entity must apply for registration;

(b) a requirement that an entity’s application for registration be accompanied by a statement issued by a specified person as to the entity’s future financial viability;

(c) a requirement that an entity’s application for registration be accompanied by specified information about the entity (which may include statistical information);

(d) a requirement that an entity’s application for registration be accompanied by such a fee as is ascertained in accordance with the scheme.

Consequences of non‑compliance with registration requirements

(3) The scheme may provide for one or more of the following consequences for an entity that does not comply with a particular requirement relating to registration:

(a) the consequence that the entity is not eligible for an innovation grant;

(b) the consequence that the entity’s eligibility for an innovation grant is subject to restriction or reduction;

(c) the consequence that the time of payment of an innovation grant to the entity is deferred.

Division 5—Strategic business plans and accounts

37ZV Strategic business plans

The Clothing and Household Textile (BIC) scheme must provide that an entity is not eligible for an innovation grant unless the entity has complied with such requirements (if any) as are imposed by the scheme in relation to the content and submission of:

(a) strategic business plans; and

(b) variations of strategic business plans.

37ZW Accounts

The Clothing and Household Textile (BIC) scheme may provide that an entity ascertained in accordance with the scheme is not eligible for an innovation grant unless the entity has complied with such requirements as are imposed by the scheme in relation to:

(a) the submission of audited accounts and audited financial statements; or

(b) the submission of unaudited accounts and unaudited financial statements.

Division 6—Conditional grants

37ZX Conditional grants

(1) The Clothing and Household Textile (BIC) scheme may make provision for and in relation to the payment of innovation grants subject to conditions (whether conditions precedent or conditions subsequent).

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

Condition—compliance with information gathering notice

(2) An innovation grant paid to an entity is subject to the condition that the entity comply with any notice given to the entity under section 38.

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

Condition—no false or misleading statements

(3) An innovation grant paid to an entity is subject to the condition that:

(a) a false or misleading statement has not been made by, or on behalf of, the entity in connection with a claim for the grant; and

(b) false or misleading information or evidence is not given by, or on behalf of, the entity in compliance or purported compliance with section 38; and

(c) a false or misleading document is not produced by, or on behalf of, the entity in compliance or purported compliance with section 38.

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

Condition—entry to premises etc. to monitor compliance with other conditions

(4) An innovation grant paid to an entity is subject to the condition that in relation to the premises covered by subsection (5), the entity:

(a) allow authorised officers, and any authorised employees of an authorised Commonwealth contractor accompanying those officers, access to the premises at any reasonable time of a business day for the purpose of monitoring compliance with other conditions to which the innovation grant is subject; and

(b) allow authorised officers during that access to inspect and search the premises and any thing on the premises for the purpose of that monitoring; and

(c) allow authorised officers to operate electronic equipment at the premises to see whether documents in electronic form relevant to that monitoring are accessible by doing so; and

Note: See also sections 37ZZ to 37ZZC (which contain provisions relating to the operation of electronic equipment at the premises).

(d) allow authorised officers to make copies of any documents in hard copy form found on the premises that are relevant to that monitoring; and

(e) provide authorised officers with all reasonable facilities and assistance in connection with that monitoring.

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

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

(5) This subsection covers the following premises:

(a) business premises specified in the notice that is given to the entity notifying the entity that the entity is entitled to be paid the innovation grant;

(b) business premises specified in a later notice given to the entity by the Secretary under subsection (6).

(6) The Secretary may, by written notice given to an entity, specify business premises for the purposes of paragraph (5)(b).

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

(1) The Secretary may, by writing, appoint an APS employee in the Department to be an authorised officer of the Department for the purposes of this Part. The Secretary may do so only if the Secretary is satisfied that the employee has suitable qualifications for such an appointment.

(2) The Secretary may, by writing, appoint an employee of an authorised Commonwealth contractor to be an authorised employee of the contractor for the purposes of this Part. The Secretary may do so only if the Secretary is satisfied that the employee has suitable qualifications for such an appointment.

Division 7—Monitoring of compliance

37ZZ Operation of electronic equipment by authorised officers

Scope

(1) This section applies if:

(a) an authorised officer has obtained access to premises for the purpose of monitoring compliance with the conditions of an innovation grant; and

(b) the authorised officer finds that documents in electronic form, relevant to that monitoring, are accessible by operating electronic equipment at the premises.

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

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

Produce documents in hard copy form

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

Transfer to storage device

(4) The other thing the officer may do is operate the equipment or other facilities at the premises to transfer the documents to a storage device (including a disk or tape) if:

(a) the storage device is brought to the premises for the exercise of the power; or

(b) the storage device is at the premises, and its use has been agreed to in writing by the occupier of the premises.

Removal

(5) The authorised officer may then remove the documents in hard copy form or remove the storage device.

37ZZA Operation of electronic equipment by experts

Scope

(1) This section applies if:

(a) an authorised officer has obtained access to premises for the purpose of monitoring compliance with the conditions of an innovation grant; and

(b) the officer believes on reasonable grounds that:

(i) documents in electronic form, relevant to that monitoring, may be accessible by operating electronic equipment at the premises; and

(ii) expert assistance is required to operate the equipment; and

(iii) an authorised employee (the ***expert***) of an authorised Commonwealth contractor accompanying the officer in relation to that monitoring has the expertise to operate the equipment.

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

Expert may operate equipment

(2) The expert may operate the equipment to determine whether such documents are accessible. If they are, the expert may do only 1 of 2 things, as set out in subsection (3) or (4).

Produce documents in hard copy form

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

Transfer to storage device

(4) The other thing the expert may do is operate the equipment or other facilities at the premises to transfer the documents to a storage device (including a disk or tape) if:

(a) the storage device is brought to the premises for the exercise of the power; or

(b) the storage device is at the premises, and its use has been agreed to in writing by the occupier of the premises.

Removal

(5) The authorised officer may then remove the documents in hard copy form or remove the storage device.

37ZZB Pre‑condition to operating electronic equipment

A person may operate electronic equipment at premises as mentioned in this Division only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

37ZZC Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of equipment being operated as mentioned in section 37ZX, 37ZZ or 37ZZA:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) schemes associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or schemes, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier’s employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1):

***damage***, in relation to data, includes damage by erasure of data or addition of other data.

37ZZD Identity cards

(1) The Secretary must issue an identity card to an authorised officer.

Form of identity card

(2) The identity card must:

(a) be in the form prescribed by the regulations; and

(b) contain a recent photograph of the authorised officer.

Offence

(3) A person commits an offence if:

(a) the person has been issued with an identity card; and

(b) the person ceases to be an authorised officer; and

(c) the person does not return the identity card to the Secretary as soon as practicable.

Penalty: 1 penalty unit.

(4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Card lost or destroyed

(5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Authorised officer must carry card

(6) An authorised officer must carry his or her identity card at all times when exercising powers as an authorised officer.

Authorised officer must produce card on request

(7) An authorised officer is not entitled to exercise any powers referred to in this Division in relation to premises if:

(a) the occupier of the premises has requested the officer to produce the officer’s identity card for inspection by the occupier; and

(b) the officer fails to comply with the request.

Division 8—Other matters for which the scheme may provide

37ZZE Advances on account of grants

Advances

(1) The Clothing and Household Textile (BIC) scheme may provide for advances on account of innovation grants that may become payable.

Repayments

(2) If:

(a) an entity receives an amount by way of an advance on account of a grant that may become payable to the entity; and

(b) that amount exceeds the amount of the grant;

the entity is liable to pay to the Commonwealth the amount of the excess.

(3) An entity is liable to pay to the Commonwealth the whole amount of an advance mentioned in paragraph (2)(a) if the entity does not receive the innovation grant on account of which the advance was given.

37ZZF Reconsideration and review of decisions

(1) The Clothing and Household Textile (BIC) scheme must contain provisions for and in relation to the review of decisions of the Secretary under the scheme that affect an entity.

(2) The scheme must contain provisions under which:

(a) an entity that is affected by a decision (the ***initial decision***) of the Secretary under the scheme may, if dissatisfied with the decision, request the Secretary to reconsider the decision; and

(b) the Secretary is required to reconsider the initial decision and to confirm, revoke or vary the decision; and

(c) an application may be made to the Administrative Appeals Tribunal for review of an initial decision that has been confirmed or varied.

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

(4) If the scheme provides that the Secretary is taken to have confirmed an initial decision after a specified period, the scheme must specify the prescribed time for making an application for review of the initial decision as so confirmed for the purposes of section 29 of the *Administrative Appeals Tribunal Act 1975*.

37ZZG Guarantees relating to payment of scheme debts

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

(a) is not eligible for an innovation grant; or

(b) is not entitled to request an advance on account of an innovation grant;

unless another entity ascertained in accordance with the scheme gives a guarantee to the Commonwealth that any scheme debts owed by the eligible entity will be paid.

37ZZH Non‑arm’s length transactions

The Clothing and Household Textile (BIC) scheme may provide that, if an entity incurs expenditure under a transaction that is not at arm’s length, the amount of that expenditure is taken to be the amount that would reasonably have been expected to be incurred if the parties had been dealing with each other at arm’s length.

37ZZI Grants and advances to be inalienable

The Clothing and Household Textile (BIC) scheme may provide for innovation grants (including advances on account of innovation grants) to be absolutely inalienable (whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise) except with the approval of the Secretary.

37ZZJ Other matters

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

(a) the making of claims for innovation grants;

(b) the times within which claims for innovation grants are to be made;

(c) requiring that a claim for an innovation grant made by an entity ascertained in accordance with the scheme be accompanied by an audited statement relating to specified activities;

(d) requiring that a claim for an innovation grant made by an entity ascertained in accordance with the scheme be accompanied by an unaudited statement relating to specified activities;

(e) requiring that a claim for an innovation grant be accompanied by such a fee as is ascertained in accordance with the scheme;

(f) the assessment of claims for innovation grants;

(g) the apportionment of expenditure;

(h) the adjustment of eligibility for innovation grants in relation to the transfer of the whole or a part of a business, including (but not limited to):

(i) treating the transferee as if the transferee had incurred particular expenditure, had derived particular revenue and had done particular acts or things; and

(ii) treating the transferor as if the transferor had not incurred particular expenditure, had not derived particular revenue and had not done particular acts or things;

(i) the times when innovation grants become payable;

(j) matters of a transitional nature (including any saving or application provisions) arising out of the transition from the TCF Post‑2005 (SIP) scheme to the Clothing and Household Textile (BIC) scheme.

(2) Subsection (1) does not, by implication, limit section 37ZM (power to make Clothing and Household Textile (BIC) scheme).

(3) The amount of a fee under the Clothing and Household Textile (BIC) scheme must not be such as to amount to taxation.

37ZZK Scheme may confer administrative powers on the Secretary

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

37ZZL Ancillary or incidental provisions

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

37ZZM Variation of scheme

(1) The Clothing and Household Textile (BIC) scheme may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) Subsection (1) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

Division 9—Publication of grant totals

37ZZN Publication of grant totals

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

(a) the name of each entity paid an innovation grant (including an advance on account of an innovation grant) during the financial year;

(b) the total of innovation grants (including advances on account of innovation grants) paid to the entity during the financial year.

Part 4—Information‑gathering powers

38 Minister or Secretary may obtain information and documents

(1) This section applies to a person if the Minister or the Secretary has reason to believe that the person:

(a) has information or a document that is relevant to the operation of a TCF scheme; or

(b) is capable of giving evidence which the Minister or the Secretary has reason to believe is relevant to the operation of a TCF scheme.

(2) The Minister or the Secretary may, by written notice given to the person, require the person:

(a) to give to the Minister or the Secretary, within the period and in the manner and form specified in the notice, any such information; or

(b) to produce to the Minister or the Secretary, within the period and in the manner specified in the notice, any such documents; or

(c) to make copies of any such documents and to produce to the Minister or the Secretary, within the period and in the manner specified in the notice, those copies; or

(d) if the person is an individual—to appear before the Minister or the Secretary at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or

(e) if the person is a body corporate—to cause a competent officer of the body to appear before the Minister or the Secretary at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(3) A person commits an offence if:

(a) the person is subject to a requirement under subsection (2); and

(b) the person contravenes the requirement.

Penalty: 20 penalty units.

(4) A notice under subsection (2) must set out the effect of the following provisions:

(a) subsection (3);

(b) section 49;

(c) section 50;

(d) section 51.

39 Copying documents—reasonable compensation

A person is entitled to be paid reasonable compensation for complying with a requirement covered by paragraph 38(2)(c).

40 Self‑incrimination

(1) An individual is not excused from giving information or evidence or producing a document or a copy of a document under this Part on the ground that the information or evidence or the production of the document or copy might tend to incriminate the individual or expose the individual to a penalty.

(2) However:

(a) giving the information or evidence or producing the document or copy; or

(b) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence or producing the document or copy;

is not admissible in evidence against the individual in criminal proceedings other than:

(c) proceedings for an offence against subsection 38(3) or section 50 or 51; or

(d) proceedings for an offence against section 49 that relates to this Part.

41 Copies of documents

(1) The Minister or the Secretary may inspect a document or copy produced under this Part and may make and retain copies of, or take and retain extracts from, such a document.

(2) The Minister or the Secretary may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 38(2)(c).

42 Minister or Secretary may retain documents

(1) The Minister or the Secretary may take, and retain for as long as is necessary, possession of a document produced under this Part.

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Minister or the Secretary to be a true copy.

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(4) Until a certified copy is supplied, the Minister or the Secretary must, at such times and places as the Minister or the Secretary thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

Part 5—Recovery of scheme debts

43 Recovery of conditional grants

If:

(a) a grant under a TCF scheme is paid to an entity; and

(b) the grant is paid subject to a condition (whether a condition precedent or a condition subsequent); and

(c) the condition is not fulfilled;

the Commonwealth may recover from the entity the whole or a part of the grant.

44 Scheme debts are debts due to the Commonwealth

A scheme debt is a debt due to the Commonwealth.

45 Recovery by legal proceedings

A scheme debt may be recovered by the Commonwealth by action in a court of competent jurisdiction.

46 Recovery by set‑off

(1) If an entity is liable to pay a scheme debt, the Commonwealth may recover the scheme debt from the entity by deducting the amount of the scheme debt from either or both of the following:

(a) one or more amounts that are payable to the entity by way of an advance or advances on account of a grant or grants that may become payable to the entity;

(b) one or more grants that are payable to the entity under a TCF scheme.

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

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

47 Commonwealth may collect money from a person who owes money to an entity

What this section does

(1) This section allows the Commonwealth to collect money from a person who owes money to an entity that has a scheme debt.

The Secretary may give direction

(2) The Secretary may direct a person (the ***third party***) who owes, or may later owe, money (the ***available money***) to the entity to pay some or all of the available money to the Commonwealth in accordance with the direction. The Secretary must give a copy of the direction to the entity.

Limit on directions

(3) The direction cannot require an amount to be paid to the Commonwealth at a time before it becomes owing by the third party to the entity.

Third party to comply

(4) The third party must comply with the direction, so far as the third party is able to do so.

Penalty: 20 penalty units.

Court orders

(5) If a person is convicted of an offence in relation to a refusal or failure of the third party to comply with subsection (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Commonwealth an amount up to the amount involved in the refusal or failure of the third party.

Indemnity

(6) Any payment made by the third party under this section is taken to have been made with the authority of the entity and of all other persons concerned, and the third party is indemnified for the payment.

Notice

(7) If the whole of the scheme debt of the entity is discharged before any payment is made by the third party, the Secretary must immediately give notice to the third party of that fact.

When third party is taken to owe money

(8) The third party is taken to owe money to the entity if:

(a) money is due or accruing by the third party to the entity; or

(b) the third party holds money for or on account of the entity; or

(c) the third party holds money on account of some other person for payment to the entity; or

(d) the third party has authority from some other person to pay money to the entity;

whether or not the payment of the money to the entity is dependent on a pre‑condition that has not been fulfilled.

Building societies—withdrawable shares

(9) For the purposes of this section, money that has been paid by a person to a building society for the issue of withdrawable shares in the capital of the society, but has not been repaid, is taken to be:

(a) if the money is payable on demand—money due by the building society to the person; or

(b) if the money is repayable on demand—money that may become due by the building society to the person.

Definition

(10) In this section:

***building society*** means a society registered or incorporated as a building society, co‑operative housing society or other similar society under the law in force in a State or Territory.

Part 6—Offences

48 Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

49 False or misleading information

A person commits an offence if:

(a) the person gives information to another person; and

(b) the person does so knowing that the information is false or misleading in a material particular; and

(c) either of the following subparagraphs applies:

(i) the information is given to a person who is exercising powers or performing functions under, or in connection with, a TCF scheme;

(ii) the information is given in compliance or purported compliance with section 38.

Penalty: Imprisonment for 12 months.

50 False or misleading evidence

A person commits an offence if:

(a) the person gives evidence to another person; and

(b) the person does so knowing that the evidence is false or misleading in a material particular; and

(c) the evidence is given under section 38.

Penalty: Imprisonment for 12 months.

51 False or misleading documents

(1) A person commits an offence if:

(a) the person produces a document to another person; and

(b) the person does so knowing that the document is false or misleading in a material particular; and

(c) the document is produced in compliance or purported compliance with section 38.

Penalty: Imprisonment for 12 months.

(2) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

(a) stating that the document is, to the knowledge of the first‑mentioned person, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first‑mentioned person, false or misleading.

Part 7—Miscellaneous

52 Delegation

Delegation to senior officers of the Department

(1) The Secretary may, by writing, delegate to one or more senior officers of the Department any or all of the Secretary’s functions or powers under this Act or a TCF scheme.

(1A) Subsection (1) does not apply in relation to the powers under the following provisions:

(a) subsections 37P(6) and (7);

(b) section 37ZY.

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

(2) A delegate is, in the performance of a function delegated under subsection (1), or in the exercise of a power delegated under subsection (1), subject to the directions of the Secretary.

(3A) The Secretary may, by writing, delegate to one or more senior employees of an authorised Commonwealth contractor any or all of the Secretary’s functions or powers under the TCF Post‑2005 (SIP) scheme, other than the function referred to in paragraph 37X(2)(b) (which deals with the reconsideration of decisions).

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

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

Definitions

(6) In this section:

***authorised Commonwealth contractor*** means a person who:

(a) provides, or proposes to provide, services to the Commonwealth under a contract; and

(b) is authorised, in writing, by the Secretary for the purposes of this definition.

***senior employee***, in relation to an authorised Commonwealth contractor, means an employee of the contractor, where the skills and responsibilities that are expected of the employee are equivalent to, or exceed, the skills and responsibilities expected of at least one of the senior officers of the Department.

***senior officer***, in relation to the Department, means:

(a) an SES employee, or acting SES employee, in the Department; or

(b) a person who holds or performs the duties of an Executive Officer (Level 2) office or position in the Department.

53 Availability of grants

To avoid doubt, nothing in this Act implies that grants under a TCF scheme must be available in respect of a particular income year.

55 International obligations

(1) In performing a function, or exercising a power, conferred by this Act, the Minister must have regard to Australia’s obligations under:

(a) the Agreement Establishing the World Trade Organization; and

(b) the Australia New Zealand Closer Economic Relations Trade Agreement; and

(c) an international agreement specified in the regulations.

(2) Subsection (1) does not limit the matters to which the Minister may have regard.

(3) In performing a function, or exercising a power, conferred by a TCF scheme, the Minister or the Secretary must have regard to Australia’s obligations under:

(a) the Agreement Establishing the World Trade Organization; and

(b) the Australia New Zealand Closer Economic Relations Trade Agreement; and

(c) an international agreement specified in the regulations.

(4) Subsection (3) does not limit the matters to which the Minister or the Secretary may have regard.

(5) In this section:

***Australia New Zealand Closer Economic Relations Trade Agreement*** includes:

(a) a Protocol relating to that agreement; and

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

***international agreement*** means:

(a) a convention to which Australia is a party; or

(b) an agreement between Australia and a foreign country.

55A Additional effect of Act

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

(a) a corporation to which paragraph 51(xx) of the Constitution applies; or

(b) an entity that carries on business in a Territory;

(c) an entity engaging in acts or practices in the course of, or in relation to, trade or commerce:

(i) between Australia and places outside Australia; or

(ii) among the States; or

(iii) within a Territory, between a State and a Territory or between 2 Territories.

56 Regulations

The Governor‑General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- | --- |
| Textile, Clothing and Footwear Strategic Investment Program Act 1999 | 182, 1999 | 22 Dec 1999 | 22 Dec 1999 (s 2) |  |
| Public Employment (Consequential and Transitional) Amendment Act 1999 | 146, 1999 | 11 Nov 1999 | Sch 1 (item 935): 22 Dec 1999 (s 2(3)) | — |
| as amended by |  |  |  |  |
| Statute Law Revision Act 2002 | 63, 2002 | 3 July 2002 | Sch 2 (item 29): 22 Dec 1999 (s 2(1) item 58) | — |
| Textile, Clothing and Footwear Strategic Investment Program Amendment Act 2004 | 36, 2004 | 20 Apr 2004 | 20 Apr 2004 (s 2) | s 4 |
| Textile, Clothing and Footwear Strategic Investment Program Amendment (Post‑2005 Scheme) Act 2004 | 146, 2004 | 14 Dec 2004 | 14 Dec 2004 (s 2(1) items 1, 2) | Sch 1 (item 11) |
| Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Act 2010 | 43, 2010 | 14 Apr 2010 | 14 Apr 2010 (s 2) | Sch 1 (items 46, 47) |
| Statute Law Revision Act 2011 | 5, 2011 | 22 Mar 2011 | Sch 7 (item 139): 19 Apr 2011 (s 2(1) item 18) | — |
| Acts Interpretation Amendment Act 2011 | 46, 2011 | 27 June 2011 | Sch 2 (item 1149) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 11, 12) | Sch 3 (items 10, 11) |
| Statute Law Revision Act (No. 1) 2016 | 4, 2016 | 11 Feb 2016 | Sch 4 (items 1, 313–315): 10 Mar 2016 (s 2(1) item 6) | — |
| National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 | 67, 2018 | 29 June 2018 | Sch 2 (items 32–34): 29 Dec 2018 (s 2(1) item 3) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| Title | am No 43, 2010 |
| **Part 1** |  |
| s 1 | am No 43, 2010 |
| s 3 | am No 146, 2004 |
|  | rs No 43, 2010 |
| s 4 | am No 146, 2004; No 43, 2010; No 5, 2011; No 46, 2011 |
| Part 2 | rep No 43, 2010 |
| Division 1A | ad No 146, 2004 |
|  | rep No 43, 2010 |
| s 7A | ad No 146, 2004 |
|  | rep No 43, 2010 |
| s 7B | ad No 146, 2004 |
|  | rep No 43, 2010 |
| s 8 | rep No 43, 2010 |
| s 9 | rep No 43, 2010 |
| s 10 | am No 36, 2004 |
|  | rep No 43, 2010 |
| s 11 | rep No 43, 2010 |
| s 12 | rep No 43, 2010 |
| s 13 | rep No 43, 2010 |
| s 14 | rep No 43, 2010 |
| s 14A | ad No 36, 2004 |
|  | rep No 43, 2010 |
| s 15 | rep No 43, 2010 |
| s 16 | rep No 43, 2010 |
| s 17 | rep No 43, 2010 |
| s 18 | rep No 43, 2010 |
| Division 4A | ad No 146, 2004 |
|  | rep No 43, 2010 |
| s 18A | ad No 146, 2004 |
|  | rep No 43, 2010 |
| s 18B | ad No 146, 2004 |
|  | rep No 43, 2010 |
| s 18C | ad No 146, 2004 |
|  | rep No 43, 2010 |
| s 18D | ad No 146, 2004 |
|  | rep No 43, 2010 |
| s 18E | ad No 146, 2004 |
|  | rep No 43, 2010 |
| s 18F | ad No 146, 2004 |
|  | rep No 43, 2010 |
| s 19 | rep No 43, 2010 |
| s 20 | rep No 43, 2010 |
| s 21 | rep No 43, 2010 |
| s 22 | rep No 43, 2010 |
| s 23 | rep No 43, 2010 |
| s 24 | rep No 43, 2010 |
| s 25 | rep No 43, 2010 |
| s 26 | rep No 43, 2010 |
| s 27 | rep No 43, 2010 |
| s 28 | rep No 43, 2010 |
| s 29 | rep No 43, 2010 |
| s 30 | rep No 43, 2010 |
| s 31 | rep No 43, 2010 |
| s 32 | rep No 43, 2010 |
| s 33 | rep No 43, 2010 |
| s 34 | rep No 43, 2010 |
| s 35 | rep No 43, 2010 |
| s 36 | rep No 43, 2010 |
| Part 3 | rep No 43, 2010 |
| s 37 | rep No 43, 2010 |
| **Part 3A** |  |
| Part 3A | ad No 146, 2004 |
| **Division 1** |  |
| s 37A | ad No 146, 2004 |
|  | am No 43, 2010 |
| s 37B | ad No 146, 2004 |
|  | am No 43, 2010 |
| **Division 2** |  |
| s 37C | ad No 146, 2004 |
| s 37D | ad No 146, 2004 |
|  | am No 43, 2010 |
| **Division 3** |  |
| s 37E | ad No 146, 2004 |
| s 37F | ad No 146, 2004 |
| s 37G | ad No 146, 2004 |
|  | am No 43, 2010 |
| s 37H | ad No 146, 2004 |
|  | am No 43, 2010 |
| s 37J | ad No 146, 2004 |
| s 37K | ad No 146, 2004 |
| **Division 4** |  |
| s 37L | ad No 146, 2004 |
| **Division 5** |  |
| s 37M | ad No 146, 2004 |
| s 37N | ad No 146, 2004 |
| **Division 6** |  |
| s 37P | ad No 146, 2004 |
|  | am No 43, 2010 |
| s 37Q | ad No 146, 2004 |
| s 37R | ad No 146, 2004 |
|  | am No 67, 2018 |
| s 37S | ad No 146, 2004 |
| s 37T | ad No 146, 2004 |
| s 37U | ad No 146, 2004 |
| **Division 7** |  |
| s 37V | ad No 146, 2004 |
| s 37W | ad No 146, 2004 |
| s 37X | ad No 146, 2004 |
|  | am No 43, 2010 |
| s 37Y | ad No 146, 2004 |
| s 37Z | ad No 146, 2004 |
| s 37ZA | ad No 146, 2004 |
| s 37ZB | ad No 146, 2004 |
| s 37ZC | ad No 146, 2004 |
| s 37ZD | ad No 146, 2004 |
| s 37ZE | ad No 146, 2004 |
| s 37ZF | ad No 146, 2004 |
| s 37ZG | ad No 146, 2004 |
|  | am No 43, 2010 |
| s 37ZH | ad No 146, 2004 |
| s 37ZI | ad No 146, 2004 |
|  | am No 43, 2010 |
| **Part 3B** |  |
| s 37ZJ | ad No 146, 2004 |
| **Part 3C** |  |
| Part 3C | ad No 43, 2010 |
| **Division 1** |  |
| s 37ZK | ad No 43, 2010 |
| s 37ZL | ad No 43, 2010 |
| **Division 2** |  |
| s 37ZM | ad No 43, 2010 |
| s 37ZMA | ad No 43, 2010 |
| s 37ZN | ad No 43, 2010 |
| s 37ZO | ad No 43, 2010 |
| **Division 3** |  |
| s 37ZP | ad No 43, 2010 |
| s 37ZQ | ad No 43, 2010 |
| s 37ZQA | ad No 43, 2010 |
| s 37ZQB | ad No 43, 2010 |
| s 37ZR | ad No 43, 2010 |
| s 37ZS | ad No 43, 2010 |
| s 37ZT | ad No 43, 2010 |
| **Division 4** |  |
| s 37ZU | ad No 43, 2010 |
| **Division 5** |  |
| s 37ZV | ad No 43, 2010 |
| s 37ZW | ad No 43, 2010 |
| **Division 6** |  |
| s 37ZX | ad No 43, 2010 |
| s 37ZY | ad No 43, 2010 |
| **Division 7** |  |
| s 37ZZ | ad No 43, 2010 |
| s 37ZZA | ad No 43, 2010 |
|  | am No 67, 2018 |
| s 37ZZB | ad No 43, 2010 |
| s 37ZZC | ad No 43, 2010 |
| s 37ZZD | ad No 43, 2010 |
| **Division 8** |  |
| s 37ZZE | ad No 43, 2010 |
| s 37ZZF | ad No 43, 2010 |
| s 37ZZG | ad No 43, 2010 |
| s 37ZZH | ad No 43, 2010 |
| s 37ZZI | ad No 43, 2010 |
| s 37ZZJ | ad No 43, 2010 |
| s 37ZZK | ad No 43, 2010 |
| s 37ZZL | ad No 43, 2010 |
| s 37ZZM | ad No 43, 2010 |
| **Division 9** |  |
| s 37ZZN | ad No 43, 2010 |
| **Part 4** |  |
| s 38 | am No 146, 2004; No 43, 2010; No 4, 2016 |
| **Part 5** |  |
| s 43 | rs No 146, 2004 |
|  | am No 43, 2010 |
| s 46 | am No 146, 2004 |
|  | rs No 43, 2010 |
| **Part 6** |  |
| s 49 | am No 146, 2004; No 43, 2010; No 4, 2016 |
| s 50 | am No 4, 2016 |
| s 51 | am No 4, 2016 |
| **Part 7** |  |
| s 52 | am No 146, 1999 (as am by No 63, 2002); No 146, 2004; No 43, 2010; No 67, 2018 |
| s 53 | am No 146, 2004; No 43, 2010 |
| s 54 | rep No 43, 2010 |
| s 55 | am No 146, 2004; No 43, 2010 |
| s 55A | ad No 43, 2010 |