

Chapter 2

The Bill

Purpose of the bill

2.1 The Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Bill 2009 amends the *Textile, Clothing and Footwear Strategic Investment Program Scheme Act 1999* which provides for financial assistance to the Textile, Clothing and Footwear (TCF) industries.

2.2 The key amendments the bill makes to the Act are to:

- provide the legislative framework for the creation of the new Clothing and Household Textile (Building Innovative Capability (BIC)) scheme (the details of the scheme will be established by legislative instrument);
- cease funding for the Textile, Clothing and Footwear Post-2005 (Strategic Investment Program) scheme after 2010-11, as it will be replaced by the newly established Clothing and Household Textile (BIC) scheme in the 2010-11 to 2014-15 income years;
- provide that under both schemes, particular decisions by the Secretary relating to the application of caps, expenditure thresholds and the modulation factor may be exempt from merits review;
- provide a standing appropriation to fund the Clothing and Household Textile (BIC) scheme; and
- repeal the Parts of the Act relating to the original Textile, Clothing and Footwear Strategic Investment Program Scheme and the Regional Assistance Program, as these programs no longer operate.¹

2.3 The Clothing and Household Textile (BIC) scheme will provide grants to designers and manufacturers of clothing and household textiles in Australia who invest in innovation, to achieve its objective:

...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.²

1 Explanatory Memorandum (EM), *Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Bill 2009*, pp 2-3.

2 EM, p. 2.

Provisions of the bill

2.4 The main provisions of the bill are discussed below.³ Detail on the consequential amendments to the Act can be found in the Explanatory Memorandum (EM) to the bill.

Repeal of redundant programs

2.5 Item 13 repeals Parts 2 and 3 of the Act as they are spent provisions. Part 2 relates to the Textile, Clothing and Footwear Strategic Investment Program Scheme (TCF (SIP) scheme) under which grants are no longer payable. Part 3 provides for the supplementation of the Regional Assistance Program, which has now ceased.

2.6 Item 47 inserts a savings provision which preserves the recovery of scheme debt provisions and offence provisions that relate to the TCF (SIP) scheme despite the repeal of Parts 2 and 3.

Amendments to the TCF Post-2005 (SIP) scheme

Grants

2.7 Items 18-20, 22, 24 and 26 have the effect of reducing the total cap on the amount of grants under the TCF Post-2005 (SIP) scheme from \$575 million to \$487.5 million and limiting the income years in which grants can be made under the scheme to the 2005-06 to 2009-10 income years.

2.8 Under the TCF Post-2005 (SIP) scheme, the total of grants paid for the 2005-06 to 2009-10 income years was capped at \$487.5 million, with an additional \$87.5 million provided for the 2010-11 to 2014-15 income years, therefore the amount of funding available until 2009-10 has not changed.

Review of decisions

2.9 Item 29 inserts a new subsection 37X(2A) which provides that the TCF Post-2005 (SIP) scheme may specify that certain decisions made by the Secretary will be exempt from review.

2.10 Item 32 inserts an identical provision for the operation of the Clothing and Household Textile (BIC) scheme in subsection 37ZZF(3).

2.11 While the types of decisions which are to be exempt from review are not described in the new subsection 37X(2A), the EM details that the decisions which may be exempt from review are those which arise from the application of caps, expenditure thresholds or the modulation factor, to:

3 The information in this part of the chapter is taken largely from the Explanatory Memorandum to the bill. See: EM, *Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Bill 2009*.

- the entitlement to be paid a grant, or the amount of a grant; and
- the eligibility for an advance of a grant, or the amount of an advance.

2.12 The particular caps, expenditure thresholds and the modulation factor which may apply to grants or advances are described in detail as follows:

- the prescribed caps on the maximum payment rates for grants and advances on account of grants;
- the prescribed sales-based caps for grants (which are based on a percentage of revenue or investment amounts);
- the prescribed expenditure thresholds (which must be exceeded before grants and advances on account of grants can be paid); and
- the modulation factor (which ensures that the total of grants (including advances on account of grants) does not exceed the expenditure limit on the scheme).⁴

2.13 The EM explains that if decisions of the Secretary relating to the application of caps, expenditure thresholds or the modulation factor were subject to review, it is possible that the operation of the scheme would be affected:

For example, the amounts of grants payable in a financial year are determined late in the year once all claims for grants have been made. If the total of the claims exceeds the annual limit on payments, each entity's grant amount is adjusted by the modulation factor to ensure that the total payment limit is not exceeded. The modulation factor is worked out in accordance with a prescribed formula and must be applied to each entity's grant eligibility amount. Review of the Secretary's decision on one entity's modulated grant amount arising out of the application of the modulation factor would affect the payment of grants to all other entities (which is required in early June) as all payments would have to be delayed until the review process is completed in order to ration the available funds equitably. For equity reasons, the same modulation factor in a particular program year is applied to each entity's grant eligibility amount.⁵

2.14 The EM notes that as the details of the TCF Post-2005 (SIP) scheme are prescribed in the legislative instrument to allow some flexibility to adjust the operating parameters (such as caps and thresholds) in response to new circumstances, it is appropriate that the decisions that are exempt from merits review also be prescribed in the legislative instrument.

2.15 The EM further states that scheme participants are aware of the lack of review for certain decisions on grants and advances, and are used to only looking at the legislative instrument for the detail of the scheme.

4 EM, p. 6.

5 EM, p. 6.

Establishment of the Clothing and Household Textile (BIC) scheme

2.16 Item 32 inserts a new Part 3C, which provides the legislative framework for the establishment of the Clothing and Household Textile (BIC) scheme. Part 3C largely replicates Part 3A which provides for the formulation of the TCF Post-2005 (SIP) scheme.

Features of the scheme

2.17 The key features of the Clothing and Household Textile (BIC) scheme established under Part 3C are:

- Grants will be made in connection with the design and manufacture, in Australia, of eligible clothing and household textile products.
- The total of grants payable under the scheme is capped at \$112.5 million (section 37ZN).
- One type of grant will be provided – innovation grants in respect of clothing/finished textile expenditure.
- Grants will be provided for expenditure incurred in the 2010-11 to 2014-15 income years (section 37ZR(2)(b)).
- Grants will be paid in arrears.
- Entities wishing to obtain grants under the scheme may be required to register and to submit strategic business plans and accounts.

The legislative instrument

2.18 Under section 37ZM, the Minister is empowered to formulate the scheme by a legislative instrument, which may include the following matters:

- registration requirements for the scheme;
- consequences for not complying with these requirements;
- requirements to provide strategic business plans and accounts;
- provision for the payment of conditional innovation grants;
- advances on account of grants that may become payable;
- the review of decisions of the Secretary (see paragraphs 2.9-2.15);
- that grants and advances are inalienable;
- conferring administrative powers on the Secretary;
- the making of claims for innovation grants;
- the times within which claims for innovation grants are to be made;
- 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;

- 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;
- requiring that a claim for an innovation grant be accompanied by such a fee as is ascertained in accordance with the scheme;
- the assessment of claims for innovation grants;
- the apportionment of expenditure;
- 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):
 - treating the transferee as if the transferee had incurred particular expenditure, had derived particular revenue and had done particular acts or things; and
 - 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;
- the times when innovation grants become payable; and
- 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.

Provision of a standing appropriation

2.19 Section 37ZO provides that innovation grants will be paid out of the Consolidated Revenue Fund.

2.20 The EM explains that:

A standing appropriation is warranted for the Clothing and Household Textile (BIC) scheme in order to provide participating entities with a degree of certainty that innovation grants will be funded in future years of the scheme. This is important because participating entities incur clothing/finished textile expenditure in one year and then wait until the following year before being able to claim innovation grants to which they are entitled to be paid.⁶

Analysis of the bill

2.21 The Clothing and Household Textile (BIC) scheme replaces the phased down section of the TCF Post-2005 (SIP) scheme, which was to provide \$87.5 million of grants for the 2010-11 to 2014-15 income years.

6 EM, p. 9.

2.22 The Clothing and Household Textile (BIC) scheme will provide \$112.5 million in grants over the same time period. It provides a more targeted grants program than the TCF Post-2005 (SIP) scheme, providing innovation grants to a very specific section of the TCF industries.

2.23 As the Clothing and Household Textile (BIC) scheme only provides grants to 'eligible clothing and household textile products' some products which were eligible for funding under the TCF Post-2005 (SIP) scheme will not be able to access funding under the Clothing and Household Textile (BIC) scheme.

2.24 Other than the key differences observed in the table below, the two schemes operate in a similar manner:

TCF Post-2005 (SIP) scheme	Clothing and Household Textile (BIC) scheme
Provided grants in connection with the design and manufacture, in Australia, of <i>eligible TCF products</i> .	Provides grants in connection with the design and manufacture, in Australia, of <i>eligible clothing and household textile products</i> .
The total of grants paid under the scheme for the income years 2010-11 to 2014-15 was <i>not to exceed \$87.5 million</i> .	The total of grants paid under the scheme for the income years 2010-11 to 2014-15 is <i>not to exceed \$112.5 million</i> .
Provided <i>two types of grants</i> : <ul style="list-style-type: none"> • Type 1 – for capital investment expenditure • Type 2 – for research and development expenditure 	Provides <i>one type of grant</i> - innovation grants in respect of clothing/finished textile expenditure.