

Settling in for the TCF-SIP long haul

The Government has finally taken action to stem continuing speculation about the long-term funding position of the Textiles, Clothing and Footwear Strategic Investment Program (TCF-SIP), whilst at the same time allowing payments for Round 2 (2001/02) applications to commence by addressing concerns regarding the early application of modulation to grant payments.

At the end of August, Industry Minister, Ian Macfarlane, introduced new legislation into the Parliament which had the effect of updating the whole body of law relating to the SIP Scheme. In effect, administration of the Scheme from Round 2 forward is to be governed by a revamped 'Amended Scheme', effective from 27 August 2002.

Requests, claims and grants entertained by AusIndustry in Round 1 (the two pre-Program years and 2000/01) remain subject to the original TCF-SIP Scheme of 1999 (as amended), which is now referred to as the 'Old Scheme'.

This newsletter analyses key changes now embodied in the 'Amended Scheme', as well as implications for future grant payments due to successful appeals taken to the Administrative Appeals Tribunal for review.

If you have any queries about issues raised in this newsletter, please don't hesitate to ring me, or Email your queries to: gerry@tcf.net.au.

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No early 'modulation' - but it could be a race to lodge your claim

In light of AusIndustry's difficulties in getting a clear 'handle' on the level of likely SIP claims and future grant payments due to 'wish list' registration figures lodged by industry (when compared to actual Round 1 claim results), the Minister has decided there will be no modulation of Round 2 SIP payments.

Rather than dealing with the issue of 'modulation' annually - as required by the 'Old Scheme' - Macfarlane has re-engineered the process by which disbursement of the \$677.7 million in total SIP funding will be managed over the next four financial years. As such, new provisions have been inserted into the Amended Scheme that apply 'annual limits' to grant payments for each remaining Program year.

These annual limits are: **\$130.1m (2001/02); \$135m (2002/03); \$135m (2003/04) and \$129.6m (2004/05)**, together with any unspent amounts from previous program years. At this stage, AusIndustry is understood to have paid out around \$128m (+20m in provisions) in grants, encompassing the two pre-Program years and SIP Round 1 (2000/01).

So, as long as payments do not exceed the 'annual limits on payouts' as set out in the Amended Scheme, applicants will receive their full entitlements. However, if during the available timeframe allocated to the claim process (for which the Amended Scheme now invokes a final lodgement deadline of 31 March), payments for claims exceed the 'annual limit', then those payments will be frozen and rolled-over to the next financial year. If these effects combine to exceed the annual payment limit in any one year, modulation may be invoked in the next year.

Whilst taking the pressure off the Minister, the Amended Scheme sets a new 'trap' for industry. Claimants subject to a frozen rollover will end up being penalised, due to the application of two claims against a single year's (the latter) 5% of sales cap. The frozen rolled over claim will be paid out in full, but at a later time, whilst the following year's claim will be reduced by the 5% cap and/or modulation.

As a consequence of the Amended Scheme provisions, any claimant caught in this quandary whose intention it is to cap out each year, is likely to lose their final year grant entitlement due to the rolling effect pushing the grant payment backwards in time whereby the final year is lost due to Scheme closure. The problem is no-one will know when or if this 'effect' will come into play until such time as AusIndustry makes an announcement on the status of overall Scheme funding.

Accordingly, the onus is now on claimants and consultants alike to prepare and lodge claims as early as possible, to ensure they are ahead in the new race to 'collar' grants before payouts push up to each annual limit on payouts. This uncertainty could also end up affecting some claimants with deferred non-standard accounting years.

Lock-jaw, or sticking to the approved budget

On the basis of claim experience to date, industry analysis suggests that overall Scheme funding should still be sufficient to cover the full term of the SIP, with perhaps a little left over at the end. Depending on the size of the funding surplus, the Government might consider granting a one year's extension of the SIP in the case it chooses not to sustain a further five-year program in the manner already proposed for the Automotive industry. Remember, 2006/07 is Federal election time, and therefore, anything is possible.

On the other hand, if industry suddenly starts to put in place substantive investments over the next two to three years - thereby creating a series of modulated payment years - then the pool of authorised expenditure will be exhausted and those firms lodging claims in the final year of the Scheme (Round 5 or 2004/05), will have their grant payments reduced appropriately (ie: modulation will be set at something well short of 1).

Just to make sure it is in a good position to make an informed judgement on funding for Round 5, Macfarlane has also inserted new provisions into the Scheme that mean whilst all final-year SIP grant claims will be duly accepted and assessed by AusIndustry - all payments for such grants will be held back until June 2006 - so the Government can make an informed decision as to whether to pay them in full, or apply modulation equally to them all.

As previously noted, and on balance, current industry survey estimates suggest the Scheme is likely to 'underspend' in each year - meaning firms will receive their full grant entitlements across the broad Scheme years. This, however, is not guaranteed given the impact of other Scheme-widening initiatives also taken by Macfarlane on 27 August.

A major Scheme enhancement - annual rollovers for Type 1-3 grants

Other new provisions in the Amended Scheme mean that should market needs or the exploitation of business opportunities require a company to undertake substantive SIP-eligible investments/expenditures in any one year (which would take any resulting grant beyond the limit of 5% of sales), a firm will not be unnecessarily penalised.

Retrospectively (only for claimants who have already been assessed) and in the future, the excess of grant above the '5% of sales' cap will now be allowed to be rolled forward into the next financial year, and paid in that year, assuming the following year's grant does not also exceed the 5% sales cap.

Even if it does, such excesses can be continually rolled forward (and paid) through to the end of the Scheme, subject to global Scheme authorised expenditure in any particular year not exceeding the payment limits now set by the Minister. To access the rolled forward grant a firm must continue to re-register, make a claim, and reach the yearly threshold of \$100,000 in eligible expenditure.

Significantly, Macfarlane has provided in the Amended Scheme that the rollover provision not be limited to just Type 1 (Capex) investments - they have been applied to all types of investments, expenditures and value-added benchmarks broadly under Type 1, 2 and 3 grants.

Whilst representing a useful change to some firms, there are also some pitfalls in terms of the timing of investments/levels of benefit for those firms who meet a certain profile. That is, where their Total Eligible Revenue (TER) is high (therefore never exceeding the 5% cap), but value added is low.

If a claimant in this circumstance has a bulky Type 1 and/or Type 2 investment in any one year for which the resultant Type 1 or 2 grant exceeds their matching Type 3 entitlement, their aggregate grant will be progressively diminished from the possible highs of 40% and 90%, respectively. This means the claimant could end up being better off deferring part of the investment into the following year.

Importantly, and to the extent that companies take advantage of the new rollover provisions, there will be a consequent impact (ie: upwards) on the 'annual authorised expenditure' provided under the 'Amended Scheme', thus pushing SIP grant payments further towards the annual limit now set down for any particular year.

'Innovation' tested, as appeals yield commonsense

The majority of appeals arising from the consideration of Round 1 claims were focused on determining the subtlety of the SIP Scheme's approach to 'innovation', especially when compared to peoples' understanding of other Government R&D assistance schemes.

Fortunately, in having to justify their view of the SIP world against an external reading of the SIP Act and Scheme, administrators have found themselves to be in the minority. Sensing the shift of wind, AusIndustry ceded most cases to applicants in advance of a 'precedent-setting' formal Administrative Appeals Tribunal (AAT) decision.

In another case, where AusIndustry decided to stick to its mettle, the AAT has shifted the SIP landscape 'out-of-the-box' - taking a broad view of Scheme interpretation and Government 'intent', thus awarding the case to the SIP applicant. In the recent Geelong Wool Combing Ltd versus DISR Secretary case (30 August 2002), it has become clear the Tribunal will tend to side favourably with an Applicant when the issue of its 'eligibility' is contested by Scheme administrators against unclear legislative definitions.

From a social justice standpoint, the Tribunal examined the beneficial outcome (or economic value) of the claimant's case, as part of a broader evaluation of eligibility for a grant, when matched to an assessment of what Parliament was trying to achieve with the Scheme, as set out in the Second Reading Speech used to accompany its introduction into the legislature.

'Racking' now eligible in more open communications climate

As an outcome of the general roll-back of Round 1 AusIndustry claim rejections, one further successful appeal will now see claimants, for whom 'Racking' expenditure was originally rejected, subsequently having their claims reassessed for payment of additional grant monies - in both the two pre-Program and subsequent Program years. AusIndustry is currently in the process of refining the mechanisms by which these additional payments will be made.

In the main, those firms that proceeded to invoke formal channels of appeal, and were willing to fight for their beliefs in regard to 'eligibility', have been successful. As a result, the record of successful appeals against decisions of 'the delegate' has had the effect of invoking a more sensible climate and manner amongst Scheme administrators, which augurs well for future SIP applications.

One immediate benefit of this 'climate change' is a new tolerance in the Amended Scheme which allows AusIndustry to grant extensions beyond the initial '60 day' benchmark set for the processing of claims. This has been done to provide a buffer so that complex or potentially eligible projects are not unduly rejected by Scheme administrators due to a lack of

understanding, or insufficient information being initially provided within the strict 60-day timeframe.

Adjusting SIP participation timelines - change your calendar now

Under the 'Old Scheme', there was an established link between the need for an applicant to lodge a claim before it could apply for re-registration for the follow-on financial year. This linkage has now been removed. The Amended Scheme provides for SIP registrations to be effected before 1 July each year, whilst the deadline for receipt of claims is 31 March each year.

In effect, if firms are late in lodging claims without good reasons - referred to as 'exceptional circumstances' - they risk missing out on a grant as AusIndustry is now required to have all claims assessed by 10 June. Claims cannot be considered after this time under any circumstances, as the 'Old Scheme' provision of 30 June has been scrapped.

Two other points. Changes in the Amended Scheme relating to Type 2 'expenses' being other than just 'labour and materials' have now been recognised when executed through a contract or detailed binding agreement. The Amended Scheme has also instituted an added requirement for an 'innovative process improvement' in that, an activity ceases to be an innovative process improvement activity if it is routinely undertaken.

The Textiles, Clothing & Footwear Industry Advisor (C) 2002 [Co-Operative Ventures (Australia) Pty Ltd] brings you the latest facts, analysis and contacts regarding Australia's TCF industries and related Government assistance and support programs.

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