



Australian Government

SCREEN  
AUSTRALIA

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# DRAFT TERMS OF TRADE

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## INTRODUCTION

### Screen Australia funding programs

Screen Australia is the Federal Government's primary funding body for the Australian screen production industry. Its functions are to support and promote the development of a highly creative, culturally relevant, innovative and commercially sustainable Australian screen industry. To this end, Screen Australia offers funding programs covering development, production financing, Indigenous and marketing.

Funding is provided by way of grant, interest-free limited-recourse loan or pro rata equity investment (recoupable investment), depending on the type of program applied for.

Funding decisions are determined by the terms and available funding for the relevant program, and the number and quality of competing qualifying applications. Eligibility requirements apply to both applicants and projects for which funding is sought.

Screen Australia will also usually cap the amount it invests in any one project.

### Terms of Trade and program guidelines

Screen Australia's **Terms of Trade**, as set out in this document, broadly outline the core terms on which the organisation will transact its business. They apply to Screen Australia funding support. They do not apply to the Producer Offset, which is governed by Division 376 of the *Income Tax Assessment Act 1997*.

Contracts entered into between Screen Australia and applicants for funding reflect both these terms of trade and the specific requirements relating to each program as set out in **program guidelines**.

The program guidelines set out any particular eligibility requirements, assessment criteria, funding caps and other matters specific to each program. See:

- [www.screenaustralia.gov.au/development](http://www.screenaustralia.gov.au/development)
- [www.screenaustralia.gov.au/production](http://www.screenaustralia.gov.au/production)
- [www.screenaustralia.gov.au/indigenous](http://www.screenaustralia.gov.au/indigenous)
- [www.screenaustralia.gov.au/marketing](http://www.screenaustralia.gov.au/marketing)

Screen Australia reserves the right to vary its Terms of Trade and program guidelines from time to time.

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## TERMS OF TRADE

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### 1. GENERAL MATTERS

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#### 1.1 Terms of trade applicable to your project

Screen Australia's terms of trade may change from time to time. The Terms of Trade in force at the time Screen Australia decides to invest in your project will continue to apply for the life of your project.

#### 1.2 General eligibility for Screen Australia funding

##### Applicant eligibility

An applicant must be:

- an Australian citizen or
- an Australian resident, defined as a person who is domiciled in Australia, and who has actually been in Australia, continuously or intermittently, during more than one half of the year immediately preceding the application; or
- a company or association that is incorporated in Australia, carries on business in Australia, and has its central management and control in Australia; generally, an applicant company must not be owned or controlled by a broadcaster; or
- a partnership or a joint venture, where the partners are eligible applicants as above.

Applicants must also:

- not be in breach of any obligation under any agreement they have with Screen Australia or any of Screen Australia's predecessors; this requirement also applies to all key principals;
- always act 'in good faith' in all their dealings with Screen Australia;
- have the capacity and resources to carry out the project that is the subject of the application;
- have the right to carry out the project that is the subject of the application (including any relevant copyright and appropriate clearances from all significant participants). If the application is based on an underlying work, Screen Australia will expect, at the least, an appropriate option;
- have meaningful creative control of the project that is the subject of the application;
- demonstrate that their application is consistent with the purpose of the relevant program;
- in relation to applications for development or production investment, be able to demonstrate that their project is eligible as set out below;
- not be an employee of a broadcaster or a company owned or controlled by a broadcaster;
- not be a full-time student at a film school or similar tertiary film, television or interactive digital media course. Applications from part-time students will be assessed on a case-by-case basis.

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Applicants must provide such information in relation to their applications as Screen Australia reasonably requires.

Screen Australia reserves the right to refuse funding where an applicant's key principals would be ineligible in accordance with these terms of trade.

### **Project eligibility**

Where an application is for development funding or production investment for a particular film, television, documentary or multiplatform project, applicants must be able to demonstrate that their project is either an Official Co-production or has significant Australian content (in the case of development funding applications, significant Australian content will be assessed based on the project's stage of development). The project does not have to be certified for the Producer Offset – in some cases Screen Australia may fund projects which do not meet the budget eligibility requirements of the Offset.

Screen Australia will use its discretion as to whether a project needs to apply for Provisional Producer Offset Certification in order to demonstrate compliance with the significant Australian content requirement.

Television projects must also be quota-eligible programs in relation to commercial broadcasters' compliance with the Australian Content Standard, as detailed on the ACMA website or the equivalent requirements applying to Australian subscription TV.

### **1.3 Acting in good faith**

Screen Australia acts in the public interest and must exhibit the highest levels of propriety in its dealing with applicants. Screen Australia requires applicants to act in the same way in their dealings with Screen Australia. Applicants must be honest and open in all dealings with Screen Australia. They must not mislead or deceive Screen Australia by act or omission.

Screen Australia also expects all successful applicants to act fairly and reasonably to third parties involved in their project. Fairness and reasonableness includes (a) paying at least award minimum rates for all work performed by third parties on their project, including cast and crew fees; (b) respecting the rights of all relevant persons, whether those rights be copyright or other intellectual property rights, moral rights or Indigenous Cultural and Intellectual Property rights.

### **1.4 Fees**

Unless otherwise indicated in the Program Guidelines, Screen Australia charges the following non-refundable fees:

- Application fee for production funding (other than Indigenous Department projects):
  - \$50 – budget total is less than \$500,000.
  - \$120 – budget total is between \$500,000 and less than \$2 million.
  - \$300 – budget total is \$2 million and above.
- Application fee for reversion of entitlement to gross receipts (see item 7):
  - \$100 – documentary projects.
  - \$300 – all other project reversions.
- Legal and administration fee where applications for production funding (other than Indigenous Department projects) are successful:

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2% of the value of the Screen Australia investment, capped at \$100,000.

- Producer Offset: application fee for Provisional Certification
  - \$100 - if budget total is less than \$1m
  - \$500 - If budget total is \$1m – \$5m
  - \$1,000 - if budget total is between \$5m – \$15m
  - \$2,000 - if budget total is between \$15m – \$30m
  - \$3,500 - for budget totals \$30m or more
- Producer Offset: re-consideration for Provisional Certification
  - Flat fee: \$200
- Fees for acting as disbursement agent:
  - Set up Fee:
    - \$250 - one-off documentaries
    - \$500 – all other projects
  - Disbursement Fee:
    - The greater amount of:
      - 1% of the Collected Gross Receipts collected in that disbursement period
      - OR
      - \$200 for features and theatrical docs /
      - \$100 for TV drama and doc series /
      - \$75 for one-off docos

The Library charges handling and research fees.

### 1.5 Audit rights

Screen Australia may require the right to audit expenditure (costs and receipts) of its investment to ensure compliance with contract requirements. In the case of production investment, a full audit is required of all production expenditure at project completion.

### 1.6 GST

Generally, GST is payable on Screen Australia's investment and fees. Screen Australia requires the applicant to have an Australian Business Number (ABN) and register for GST, if required by law. Screen Australia will require the applicant to issue a Tax Invoice as a precondition to drawdown of the Screen Australia funds.

### 1.7 ISAN

All projects in which Screen Australia holds copyright are required to have an International Standard Audiovisual Number (ISAN).  
See <http://www.australasia-isan.org/>

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## 2. CREDITING SCREEN AUSTRALIA

Screen Australia requires acknowledgement of its support, for example by way of a credit on the film and its publicity materials. Credit requirements vary according to the nature of the support.

For more information, see [www.screenaustralia.gov.au/credits](http://www.screenaustralia.gov.au/credits)

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**3. INDIGENOUS CONTENT**

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Where there is Indigenous content or participation in any production, the producer is required to comply with Screen Australia's protocols, including those related to treatment of 'Indigenous Cultural and Intellectual Property Rights'. For more information, see 'Indigenous Content and Participation' in Screen Australia's program guidelines and 'Pathways & Protocols: a filmmaker's guide to working with Indigenous people, culture and concepts' which you can download from our website.

[http://www.screenaustralia.gov.au/industry\\_support/Indigenous\\_Content.asp](http://www.screenaustralia.gov.au/industry_support/Indigenous_Content.asp)

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**4. PRODUCER OFFSET AND LIMITS ON SCREEN AUSTRALIA FUNDING**

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There are limits on the amount of direct production investment Screen Australia can provide for an individual project.

In the case of projects eligible for the Producer Offset ("Offset projects"), the amount of direct support that Screen Australia can provide will be limited so that total Government funds, including the Offset, are capped at:

- 75% of the project budget for documentaries;
- 65% for all feature films (unless exceptional circumstances warrant funding up to 75%);
- 40% for television drama and 45% children's drama production (but Screen Australia will prioritise projects with the lowest contribution from Screen Australia as a proportion of the budget).

Screen Australia expects the producer to make a contribution towards the cost of production for Offset projects. That contribution will be at least 90% of the projected value of the Offset for feature films and television, and at least 85% of the projected value of the Offset for documentaries.

That proportion of the Offset which becomes a contribution to the budget will be deemed to be producer's equity in the project, equal to the value of the contributed Offset.

Screen Australia will not cashflow the Producer Offset or any part of the Producer Offset.

In the case of Non-Offset projects, Screen Australia funding will be capped at 75% of the project budget.

Funding in excess of these limits may be considered on a case-by-case basis in exceptional circumstances.

Absolute caps on Screen Australia's investment also apply. These are set out in the program guidelines.

In relation to official co-productions, the above provisions apply only to the Australian producer, and only to the Australian components of budget and revenue.

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## 5. TERMS OF FUNDING AND GROSS RECEIPTS

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### 5.1 Grant

Investment provided by way of grant does not have to be repaid other than in case of breach.

### 5.2 Development funding

If a project has received development funding from Screen Australia and then proceeds to production with Screen Australia production investment funding, the development funds will be added to Screen Australia's production investment and recouped on the same terms as the production investment.

### 5.3 Equity Investment

For finance provided by way of recoupable investment (equity), Screen Australia requires an initial recoupment entitlement to participate in gross receipts commensurate with its investment. The recoupment structure for a project will be determined on a case-by-case basis taking into account Screen Australia investment and the investment of others, both equity and non-equity investors.

It is Screen Australia's current position that, wherever reasonably possible, producers should have a minimum recoupment entitlement of 35% ranking equally with other investors. Screen Australia contributes a share of its equity in favour of the producer to reach the 35% floor. In assessing whether the 35% floor has been reached, only the producer's Offset equity is taken into account. Once all equity investment is repaid, it is Screen Australia's current position that further revenue (profit) be shared in the proportion 50% to the producer and 50% to the equity investors. The producer's share includes the profit attached to the Offset equity.

Commencing with 2010/11 it is proposed that any minimum recoupment entitlement is eliminated. Producers will continue to receive the recoupment position associated with the Offset and any other equity contributed by the producer, with no top-up. Once all equity investment is repaid, the producer's profit share will be 50%. All equity investors (including the producer in relation to both the Producer Offset equity and any other producer equity investment) will share the remaining 50% *pro rata, pari passu*.

### 5.4 Subordination

Generally, Screen Australia will not subordinate its recoupment right to other equity investors. Screen Australia expects to participate in gross receipts *pro rata and pari passu* with other equity investors.

### 5.5 Screenrights

For all production investment approved after 1 January 2009 (or after 1 January 2008 in the case of former AFC projects), Screen Australia no longer requires Screenrights revenue to form part of Screen Australia's gross receipts.

### 5.6 Recoupment

The producer is ultimately responsible for the collection and disbursement of all gross receipts. Screen Australia will generally require the appointment of a

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collection account manager for feature films for all territories other than Australia and New Zealand. Screen Australia does not require the appointment of a collection account manager for Australia and New Zealand. However, it does offer this service (for a fee) under a Disbursement Administration Service Agreement (DASA).

#### 5.7 Official co-productions

In relation to official co-productions, the above provisions apply only to the Australian producer, and only to the Australian components of budget and revenue.

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### 6. RIGHTS FOR DEVELOPMENT AND PRODUCTION FUNDING

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Screen Australia requires the producer to have, or be in a position to acquire on appropriate terms, all underlying rights required to make and exploit the project.

Screen Australia requires a 1% copyright interest, for the duration of the project's copyright, in:

- all projects for which it provides development funding in excess of \$100,000 (development funding provided by the former Australian Film Commission will be included in assessing whether the \$100,000 funding level has been reached);
- all projects for which it provides recoupable production investment.

When a project that has received development funding from Screen Australia, does not proceed to production with Screen Australia funding, the producer may purchase any copyright held by Screen Australia by reimbursing all of the Screen Australia funding. This purchase does not attract any interest.

In addition, Screen Australia requires the following rights:

- the right to use the project and promotional materials (in whole or part) for its corporate and promotional purposes;
- in the case of National Documentary Program projects, the right to retain the project in the collection of the Screen Australia Library and to:
  - sub-license up to 40 stills and up to 10 minutes of non-continuous footage from the Film under the Zero-fee Licensing initiative, per eligible Australian documentary producer; and
  - exercise stock footage rights;
- approval or meaningful consultation rights as set out in the project's Production Investment Agreement (PIA);
- a right to grant a licence to the National Film and Sound Archive to use excerpts from the project for the purposes of *australianscreen online*;
- a right to participate in revenues generated by further exploitation of the production including sequels, spin-offs and remakes, with licence fees expected to be of the following order:
  - documentaries and adult TV drama series (6 or more episodes): \$5,000 per episode for the first series; \$7,500 for each subsequent series
  - all other formats: 2% of the production budget.

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## **7. REVERSION**

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Screen Australia will revert its entitlement to gross receipts in favour of the producer, seven years after first delivery (defined as the date of the first distribution statement or date of first broadcast if no distributor is/was attached), for all production investments approved by Screen Australia after 1 January 2009 (including under the Innovation and Indigenous programs).

Screen Australia's approach to reversion for titles approved by Screen Australia and its predecessor agencies before 1 January 2009 is set out in guidelines available on the Screen Australia website.

Where there is reversion, Screen Australia will:

- retain a 1% copyright share in the project;
- require annual reporting on sales and exploitation of the project for the purposes of Screen Australia research and analysis.

Once reversion takes place, Screen Australia will cease to be the disbursement agent. The producer will take on all responsibility to any other investor who still has an interest in the project after the Screen Australia reversion.

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## **8. COMPLETION GUARANTEE**

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Generally, Screen Australia requires the appointment of a completion guarantor for production investment projects. Depending on the experience and track record of the producer, a completion guarantor may not be required in relation to documentary productions or low-budget (non-Offset) films.

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## **9. CAPTIONING FOR FEATURE FILMS**

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Screen Australia requires that feature films it finances be captioned to provide access for the hearing impaired, for cinemas and DVD. Feature films are the only type of production subject to this requirement and the producer will need to budget for it. Feature film producers are also required by Screen Australia to use reasonable endeavours to ensure that all Australia distribution agreements include access for the hearing impaired via captioned theatrical screenings and DVDs.

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## **10. DELIVERY ITEMS FOR SCREEN AUSTRALIA AND NFSA**

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### **10.1 Production funding**

As a condition of production funding, the producer must deliver the following delivery materials to Screen Australia:

- On the delivery date:
  - Three DVD copies of the Film.
  - Three copies of the commercial release DVD.
  - An electronic press kit and written publicity pack.
  - A copy of the master set of production stills on CD Rom
- When available:
  - Three theatrical posters for Australia and overseas
  - Soundtrack on CD (where available).

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- One (1) copy of each cross platform element of the Film at the same time as such element is delivered under any Transaction Document.

## 10.2 National Documentary Program

In addition, National Documentary Program projects must deliver the following materials to Screen Australia:

- 1 Program master in HD or Digital Betacam, whichever is native format and highest resolution
- 1 CD Final Mix and Music & Effects (M&E)
- 1 CD separate audio elements - Dialogue, Music, Effects, plus Narration track.
- 1 Textless master, if the program is heavily subtitled or textless elements at end of master tape
- 1 DVD of completed program with burnt in timecode
- 1 DVD of completed program without burnt in timecode
- All All the camera tapes delivered in their native videotape format, OR If the camera generates video files directly (eg: P2 or XDCAM), all original video files delivered on Hard Drive (in their native file format or Quicktime, or other format if approved in writing)
- All One DVD viewing copy with timecode display of each and every camera originated material
- All Camera or editing logs in electronic or hard copy
- All Separate audio recordings, if available, delivered as tapes or audio files
- All Sound sheets/logs in electronic or hard copy, if available
- All Transcripts in Word format delivered electronically
- 1 Complete post-production script using the Filemaker Pro or Excel template (provided by Screen Australia), delivered electronically
- 1 Archival footage cue sheet using the Filemaker Pro or Excel template with timecode in and out points (provided by Screen Australia), delivered electronically
- 1 APRA music cue sheet with timecode in and out points delivered electronically as PDF file or in hard copy
- 1 Principal cast and crew list
- 1 Proof-read and approved final credit listing
- All Copies of cast and principal crew contracts
- All Copies of copyright clearances and release forms, filed in order of first appearance with a relevant timecode reference for each.
- All Copies of chain of title documents
- 1 Selection of stills with stills log (press kit)

## 10.3 National Film and Sound Archive

The appropriate National Film and Sound Archive (NFSA) items listed below must also be included in the budget. These items are for preservation purposes and are to be supplied, directly to the NFSA (see NFSA website for

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details <http://www.nfsa.gov.au>), at the best quality and at the completed resolution (a detailed list of requirements is supplied in your PIA):

- For projects finished on videotape: HDCAM or HDCAM SR (Digital Betacam only to be supplied if project is completed in standard definition)
- For projects finished on 35mm: the Digital Intermediate and a mint 35mm release print sent direct from the laboratory to the NFSA as a preservation print
- For projects finished on 16mm: the Digital Intermediate and a mint 16mm release print sent direct from the laboratory to NFSA as a preservation print
- For all projects: post production scripts and publicity material including websites, publicity kits and stills, provided digitally on CD or DVD.

Your productions are placed in secure storage for their ongoing preservation and copies cannot be made available without your written authorisation. The NFSA also places an initial 2 year restriction on the previewing of your production until either the day after the film is screened, broadcast on TV, or made available to the general public via video/DVD or online.

## **GLOSSARY**

### **CASHFLOW**

Funds provided by an investor, the producer, a distributor or broadcaster during production to meet the day-to-day costs of production.

### **CHAIN OF TITLE**

The set of documentation that establishes the producer's ownership of the rights in the script (and novel or stage play, if relevant), which entitles the producer to make and market the film.

### **COLLECTION ACCOUNT MANAGER (CAM)**

The organisation (usually overseas) appointed to collect international licence fees, distribution advances, etc directly from a sales agent's sub-licensees, administer the collections account, pay the sales agent's commissions and expenses and distribute the remaining gross receipts in accordance with the recoupment/disbursement schedule in the production and investment agreement for the film.

### **COMPLETION GUARANTOR**

For either a flat fee (in the case of most documentaries) or a percentage of the below the line budget of a film, a completion guarantor will guarantee or "bond" a project. This means that they will meet budget overages to ensure that the film is completed and delivered.

### **COPYRIGHT**

The exclusive right to copy, broadcast, perform, exhibit and otherwise commercially deal with and exploit works such as novels, stage plays, scripts, music, film and sound recordings. Copyright is personal property and can only be transferred in writing. Copyright assignments and licences relating to the script form part of the chain of title.

### **GROSS RECEIPTS**

All revenue from sales of a film including receipts from exploitation of ancillary and other underlying rights, any claims relating to the film and its underlying rights, statutory licences under the *Copyright Act* and interest on the collections account.

### **LIMITED RECOURSE LOAN**

A loan repayable only from a defined source of revenue (relevantly, revenue from marketing a film) or on the occurrence of a particular event.

### **NON-OFFSET PROJECT**

Describes projects where the producer cannot claim the Producer Offset. (being, generally, projects which do not meet the Producer Offset's eligibility requirements in terms of qualifying expenditure and/or format.)

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**OFFICIAL CO-PRODUCTION**

A production between two or more countries that is certified as made under a treaty, or another form of government or quasi-government arrangement (typically, a Memorandum of Understanding or MOU). In addition to meeting the requirements of the treaty or MOU, in order to be certified as an Official Co-Production, the project must comply with Screen Australia's official International Co-Production Guidelines.

**OFFSET PROJECT**

Projects which would be eligible for the Producer Offset in terms of qualifying expenditure and format.

**PRODUCER OFFSET**

The Producer Offset is a tax-based incentive based on expenditure on goods and services provided in Australia. It is available to feature films at 40% of Qualifying Australian Production Expenditure (QAPE) and for non-feature films at 20% of QAPE, as set out in the Income Tax Assessment Act 1997 (ITAA 1997). Screen Australia is the *film authority* for the purposes of the ITAA 1997 and administers the Producer Offset scheme separately from its development, production and marketing support functions.

**PRO RATA AND PARI PASSU**

The expression relates to contributions to a budget and to recoupment of investments and refers to the percentage of contribution or recoupment. A *pro rata* contribution or recoupment is one that is provided or received at the same rate or in the same proportion as the contribution or recoupment of another party. *Pari passu* contributions or recoupment are made or received at the same time as contributions or recoupment of another party.

**SUBORDINATION**

A subordinated investment is one in which the investor recoups on less favourable terms than other investors, e.g. an investor invests 40% of the budget with another who invests 60%, but on terms that the 40% investor recoups all its money first. In this case, the 60% investor would be 'fully subordinated' to the 40% investor.

**UNDERLYING RIGHTS**

The bundle of rights that must be acquired to in order to be able to produce and commercially exploit the project, such as a novel or a play.

**ZERO-FEE LICENSING INITIATIVE**

The Screen Australia Library Zero-fee Licensing Initiative enables an independent Australian documentary producer to license archival footage and stills free of charge from the library. The maximum that any producer can access is 40 stills or 10 minutes of archive footage per one-hour documentary (from a variety of programs or from one program but never a continuous 10 minutes and never more than 20% of a program's duration)..