



Submission on the Screen Australia Guidelines

The Australian Writers Guild (AWG) is the peak professional body representing performance writers in Australia.

On behalf of its 2600 members the AWG works to improve professional standards and conditions, to protect and advance creative rights, and to promote the Australian cultural voice in all its diversity, including supporting our members to succeed in the global marketplace.

With affiliations extending across the world, AWG is recognized internationally as being the voice of Australian performance writers.

- AWG members are fundamental to the success of the Australian film, television and new media industries.
- Without the script and the creators of the script, Australian film and television would cease to exist.
- In the current climate the majority of Australian performance writers struggle to make a living wage.

INTRODUCTION

The Australian Writers Guild (“the Guild”) welcomes the opportunity to comment on the draft proposed guidelines published by Screen Australia on 27 October 2008.

The Guild acknowledges that other organizations and affiliations have made articulate submissions on their own behalf in relation to, among other issues, documentary and short film production. Although the Guild is supportive of some of those submissions – particularly those made by Richard Lowenstein and Angie Fielder on behalf of members of the Australian film industry – the Guild is limiting its focus in this submission to writer-specific concerns.

EXECUTIVE SUMMARY

The Guild is gravely concerned about the draft guidelines as they currently stand and the implications they hold for the future of Australia’s writers.

In initial consultations with the Guild, Screen Australia as the peak national film finance agency emphasized its commitment to:

1. Rewarding experience and track records;
2. An acknowledgement of the importance of the script;
3. Recognizing the vital role of the screenwriter; and
4. Acknowledging the essential need for intensified, prolonged and properly funded script development.

In the proposed guidelines, Screen Australia has abjectly failed to fulfill those commitments to screenwriters in the following areas by:

1. ELIGIBILITY

- Making the eligibility requirements for recognizing experience prohibitively and inequitably high so as to exclude all but a select few screenwriters.

2. FIRST-TIME & EMERGING SCREENWRITERS AND SCRIPT DEVELOPMENT

- Abandoning first-time and emerging screenwriters completely.
- Failing to recognize that original creators are the drivers of innovation and failing to support them to do this.
- Failing to articulate any commitment to promote and ensure appropriate levels of script development.
- Failing to provide any detail of what kpi’s or other assessment criteria will be used to determine whether script development is occurring.
- Failing to provide for any transitional arrangements to ensure that script development continues until such time as the producer recipients of public funds can have their development slates assessed and prove their commitment to emerging and new talent.

3. INTELLECTUAL PROPERTY AND TERMS OF TRADE

- Demonstrating a complete disregard for the rights of writers by insisting on copyright assignments at a preliminary development phase, thereby denying writers the rights they are entitled to as creative originators of projects.
- Choosing to either withhold its mandated terms of trade for writers forced by Screen Australia to assign all rights in their work to producers OR indicated by omission its intention not to intervene in this area.

1. ELIGIBILITY

The Guild supports an emphasis on experience and success and argued strongly for recognition and support for the same. However, the eligibility requirements in the current proposed guidelines are inequitably high and cannot be supported by the Guild.

Screen Australia's assertion at its consultation sessions that there are in excess of 70 screenwriters who qualify under the "3 features" requirement is incorrect; 5 to 10 is the accurate range. As such the guidelines will close yet another door to experienced writers in the Australian screen sector.

The Guild calls on Screen Australia to explain:

1. Why, generally, the barrier for eligibility for funding for producers is so low and whether Screen Australia will make, as it must, qualitative assessments of qualifying credits;
2. Why a telemovie credit counts for a producer but not for a writer or director;
3. Why the eligibility requirements specifically alternate areas of qualifying experience in the form of three features "OR" one feature at a major festival "OR" two mini-series;
4. Why international film festival recognition is relatively considered more important than multiple local box office or ratings success;
5. Why high rating TV series which reaches more people in one evening than most Australian feature films reach in their entire release – *Secret Life of Us*, *Love My Way*, *Underbelly* – does not qualify as experience;
6. Why there is seemingly a greater discretionary element in the assessment of producer credits than for writers or directors. For example, producers need only have "exceptional credits in other genres such as a primetime broadcast miniseries or telemovie." Writers and directors on the other hand must have "...at least two network miniseries that have received significant ratings or critical acclaim."

The Guild is alarmed that Screen Australia has so transparently exposed its own version of the cultural cringe by emphasizing international acceptance at foreign film festivals over local success. The implication of this is that acceptance into, for example, Sundance – of itself no guarantee of quality or commerciality – matters more than the popular acceptance of a screenwriter who has had two feature films in wide release at home.

Fundamentally, Screen Australia has not explained why a producer with one credit is deemed experienced in their field whereas a writer must have three features to be experienced in theirs. Of even greater concern is the fact that there is seemingly no qualitative assessment of these projects. Surely it is incumbent on Screen Australia to assess the quality of an applicants experience as it does the commerciality and viability of the individual project.

The eligibility requirements will not reward experience but will impose an inequitable rigidity that, when applied to past productions, would see the authors of some of our best films ineligible. Under the proposed restrictions, writer applicants with the following projects would have been turned away without the attachment of an experienced producer: *Proof*, *Love Serenade*, *Strictly Ballroom*, *My Brilliant Career*, *Romper Stomper*, *Love and Other Catastrophes*, *Newsfront*, *The Castle*, *Wolf Creek*, *Crocodile Dundee*, *Japanese Story*, *Muriel's Wedding*, *Looking for Alibrandi*, *Lantana*, *Look Both Ways* among many, many more. Further, the individual directors and producers on almost all of those films would also have failed to pass the proposed eligibility criteria.

Recommendations:

- a) Revision of the eligibility criteria for "highly experienced" writers and directors to provide equity with producers in the qualifying criteria;

- b) The revision of the eligibility criteria to allow flexibility in order that experience across a range of genres and writing disciplines – including proven audience reach in television – be considered rather than being limited to narrow categories;
- c) The introduction of a qualitative rather than quantitative assessment to the experience of all applicants so that sensible and informed decisions can be made about the allocation of funds;

2. FIRST-TIME & EMERGING SCREENWRITERS AND SCRIPT DEVELOPMENT

The Guild believes it is an essential function of the national film funding agency to provide an avenue for the development and discovery of new and emerging talent. An important role of the AFC, it was rightly not a function that the independent screen sector could be expected to finance and it was therefore appropriate for the AFC to step into the breach.

Screen Australia has made it clear it does not consider developing individual practitioners its responsibility and that this function will now fall to either the various film funding agencies at state level and/or to the producer recipients of funding via the Enterprise program. As far as the Guild has been able to ascertain, both assumptions have been made without meaningful consultation, consideration or provisional arrangements to provide any guarantees of the continued development of new and emerging talent, particularly screenwriters.

At the time of writing this submission, no state agency had been formally approached by Screen Australia to discuss how the transfer of responsibility for this area may occur. Such an approach may be redundant in any event as none of the state agencies spoken with has any prospect of increased funding in order to fill the void left by Screen Australia's excise of new screenwriter and emerging writer programs.

Screen Australia has mentioned the possible distribution of funds by it to the state agencies in order to fund new and emerging screenwriter programs but this is entirely inadequate. The key to successful development is not via a "one door" approach, but through having multiple avenues open for applicants. Different organizations have different processes and perspectives with very different results - an analysis of the outcomes of the various state-based emerging and new screenwriter programs and the AFC is revealing. The industry must be looking to enhance, develop and expand opportunities and improving programs that are not deemed to be working rather than closing them down.

If Screen Australia is not funding individual practitioner development, then we must assume that it isn't being funded at government level higher than what currently exists in the various state programs; programs already widely regarded to be under-funded. A further problem of reliance on state agencies to perform this role is the fair and equitable access to funding for writers nationwide via state funding programs only which, due to the various constituencies, priorities and remits of the respective agencies can only apply specifically to residents of a particular state.

The second assumption – that producer recipients of funds through the Enterprise program will now invest in new and emerging talent – is also without foundation; the Guild has 40 years of evidence that emerging and new talent is more likely to be exploited than nurtured and developed.

To assert a belief that private industry should be responsible for finding and nurturing new and emerging talent is one thing, but Screen Australia has provided no detail of provisions to ensure this occurs in practice. Serious questions arise about the viability of this for producers if Screen Australia does not mandate that a proportion of funds be spent, not on script development for projects comprising their slates, but on new screenwriters and new projects. Screen Australia must provide detail of how it will respond in the event that its audit of the Enterprise program reveals that development at this level is not taking place and what specifically are the kpi's which will inform that assessment.

It is unreasonable to expect that, at least in the initial years, recipient producers will be in a position to focus their energy on identifying new talent and supporting emerging filmmakers. A more likely scenario is one where producers are focused on the slate they already have and in developing the projects on the slate as intensively as possible to move to production. For producers that will entail engaging the best writers they can afford. Market forces do not dictate investment in new and emerging screenwriters for the long-term benefit of the industry as a whole.

A further consideration highlights one of the fundamental flaws of the old system, which was that there were insufficient links to industry to connect new writers once they had been processed through new screenwriter development programs. However, rather than providing a vision for how to establish those industry links, Screen Australia seems to make yet another assumption that these connections will naturally occur as a product of market forces. This is particularly remiss given that new writers can only apply for funding with the attachment of an experienced producer.

The wholesale abandonment of new and emerging screenwriters is irresponsible and contrary to the aspiration of a healthy, evolving screen sector and any notion of the script as the foundation of a commercially viable screen industry. It also naïvely denies the reality of our current experience and the true impact of market forces in screen production.

Recommendations:

- a) Screen Australia must remain active in the area of first-time and emerging screenwriters rather than absolving itself of responsibility for the ongoing development at the foundations of the industry;
- b) Kpis in the Enterprise program need to stipulate specific levels of investment in not only general script development but the proportion of that development as well as investment in new and emerging screenwriters and projects;
- c) Screen Australia must provide a specific transitional strategy until such time as it can be properly and definitively proven that new talent is being nurtured by the private sector;
- d) Screen Australia must enhance its involvement in early development by providing clear and direct strategies to connect identifiably talented, new and emerging screenwriters in order to facilitate their entry to the industry.

3. INTELLECTUAL PROPERTY AND TERMS OF TRADE

It is unreasonable for Screen Australia to withhold its terms of trade until after the finalization of the consultation phase whilst dictating the formation of legal relationships, imposing the early transfer of rights from writers to producers and forcing creative teams into shotgun weddings in order to meet eligibility criteria.

The most valuable commodity a screenwriter has, after their ideas and craft skills, is their copyright. Although ultimately the writer must assign their copyright to the producer, the only power a writer has in the entire process of making film is whilst they still possess ownership of that copyright. Screen Australia proposes to strip writers of the only power they have at an early developmental stage by demanding that producers hold the rights in screenplays either forming part of their slate of projects for the Enterprise program or via project-by-project development.

By stripping writers of any legal claim or rights over work that is more often than not their own creation suggests that Screen Australia is taking an American-style studio approach to script development. Under this “market” model, the script is taken out of the hands of its originator and

is then developed in whatever way the producer sees fit, including bringing on other writers in order to rewrite the work without consultation with the originator.

What Screen Australia has not acknowledged in its guidelines is that writers working under the American system, also assigning their copyright at an early developmental stage, have the benefit of industry-wide agreements, rates, terms and conditions as negotiated by the Writers Guild of America. It is unacceptable for producers to have a free hand to contract with writers on whatever terms they see fit when Screen Australia is intervening to the extent that they are forcing writers to assign their copyright to producers. That intervention also brings a responsibility for Screen Australia to dictate the terms of trade between producers and writers to prevent exploitation of the screenwriters, at the behest of the national agency.

A secondary rights ownership issue arises as a direct result of Screen Australia's refusal to qualitatively assess projects comprising a producers slate under the Enterprise program – that of script harvesting. If a producer only need check a genre diversity box to qualify as having a "strong slate", there is nothing to prevent producers tying up projects, which they must hold all rights in, but which they won't necessarily have a genuine intention of developing or producing.

It is the responsibility of Screen Australia to promote a healthy industry by guarding against script harvesting and if Screen Australia is going to insist that applications must come to the agency with all rights held by the producer, then Screen Australia must also ensure provisions are in place for the return of those rights to the writer when that project is no longer being developed.

Recommendations:

- a) Industry-wide minimum fees and rates, reflective of a professional and sustainable industry, that all recipients of Screen Australia funding must adhere to when engaging writers at all levels and across all programs and no writers to be engaged on deferred fee basis;
- b) Industry-wide writers agreements be negotiated with the Guild that all recipients of Screen Australia funding through any of its programs must adhere to;
- c) Producers only be required to have an option over a writers work at the time of application and that a full rights assignment not be required until the project reaches production;
- d) Provisions for no-cost reversions of rights to writers if the project is not being actively developed by the producer after a period of two years as assessed by kpi's established by Screen Australia;
- e) Provisions for no-cost reversions of rights to writers if the project has not gone into production after a period of five years.

CONCLUSION

The Guild is deeply concerned about the assumptions being made by Screen Australia in the proposed guidelines and with the lack of detail, inconsistent and at times contradictory information contained within.

At the core of these concerns lies an apparent lack of understanding about how and why scripts get developed, where the ideas are generated and what it takes to develop a successful script. Most disturbingly is an affronting disregard for the original creator and a wholesale raid on their rights and interests.

The Guild calls on Screen Australia to seriously consider the proposals put forward in its submission, paying particular attention to the areas addressed above in relation to:

1. Eligibility;
2. First-time & emerging screenwriters and script development; and
3. Intellectual property and terms of trade.

At a time of unprecedented change, the industry is entitled to clear, articulate, reasoned and detailed guidance and leadership from the national film funding agency if the industry is to be able to work together to achieve a sustainable and healthy screen production sector for all.