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Screen Producers Australia's response to Screen Australia's draft documentary guidelines

Screen Producers Australia was formed by the screen industry to represent small-to-medium enterprises across a diverse production slate of feature film, television and interactive content.

As an employers association, we consult with a membership of almost 300 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and appointed Policy Working Group representatives. Our members employ hundreds of producers, thousands of other practitioners and account for more than $750 million worth of annual production activity.

On behalf of these businesses we are focused on delivering a healthy commercial environment through ongoing engagement with elements of the labour force, including directors, writers, actors and crew, as well as with broadcasters, distributors and government in all its various forms. This coordinated dialogue ensures that our industry is successful, employment levels are strong and the community's expectations of access to high quality Australian content can be met.

Further to our submission dated 3 February 2014[1], Screen Producers Australia welcomes this opportunity to comment on Screen Australia's draft guidelines[2]. Whilst they are not without merit, there are significant concerns that need to be addressed before they can be endorsed.

1. **Key areas of concern**
    - **1.1. The commercial impacts of these changes should not be underestimated**
    - **1.2. The objectives of the draft guidelines should be better aligned**
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2. **Observations on aspects of the draft guidelines**

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[1] See: http://screenproducersaustralia.org.au/assets/Uploads/SPA-DOCOREVIEW-final.pdf
[2] See: http://www.screenaustralia.gov.au/getmedia/d04148e7-192e-4db6-8687-e7d4587d878d/Glines_documentary_DraftForComment_20140616.pdf

1. Key areas of concern

1.1 The commercial impacts of these changes should not be underestimated.

Screen Producers Australia welcomes a number of approaches in the draft guidelines that will encourage flexibility around international deals and greater contestability of funds for emerging commissioning platforms. This will create new financing opportunities for producers of certain types of documentaries, but unfortunately the effects may be limited.

There needs to be a measured approach to the implementation of such significant change. On balance, there is a very high level of concern that the pendulum has swung too far in favour of Screen Australia underwriting an emerging market. One that has not yet matured in terms of demonstrated audience size or investment appetite. The knock-on effect will be disproportionate: disrupting the current market, increasing commercial uncertainty while reducing budgets and marginalising the reach of many Australian documentaries.

Broadcasters are likely to respond by flooding the market with letters of intent, reducing their licence fees, commissioning less and acquiring more, concentrating their investment in fewer production companies, or moving a greater proportion of production in-house. Each would negatively impact Screen Australia's aims in balancing creative and commercial innovation, cultural diversity, project scale and financial leverage of taxpayer investment in screen content.

Further clarification of Screen Australia's objectives is needed. The discussion paper did not make the case for holistic change. It did not provide evidence to demonstrate fundamental flaws in the existing programs, nor did it suggest that a complete rewrite of guidelines would better deliver what is apparently not being achieved.

1.2 The objectives of the draft guidelines should be better aligned.

Screen Australia is right to regularly review, but in doing so its functions should not be seen as mutually exclusive. The Act states that Screen Australia's first function is 'to support and promote the development of a highly creative, innovative and commercially sustainable Australian screen production industry'.[3]

In contrast, the draft guidelines place an emphasis on a subset of directives within the Act. The guidelines state that Screen Australia's slate management principles are governed by a need to 'ensure the development of a diverse range of Australian programs that deal with matters of national interest or importance to Australians, or that illustrate or interpret aspects of Australia or the life and activities of Australian people'.

Whilst the use of this second function in the draft guidelines to guide the investment principles is consistent with its use in the current guidelines, there is an apparent, growing misalignment of

[3] See: http://www.comlaw.gov.au/Details/C2008A00012

objectives. The extent of the proposed changes suggests that Screen Australia is concerned that its 'diversity' and 'national interest' imperatives are not being adequately met under the current guidelines. In particular, the market-based approached of using notional broadcaster splits.

This point should be debated further. If Screen Australia were to be solely guided by market failure as an investment principle then this approach may be acceptable, but as the Act indicates, there is the responsibility for Screen Australia to use their public investment as leverage within the marketplace.

The draft guidelines discuss at length the need for a clear 'pathway to audience', but this is impossible to achieve without building a pathway to sustainability. With this in mind, there is simply no justification for a potential doubling of the allocation for projects without marketplace attachment. This would appear contradictory to Screen Australia's sustainability objectives as well as the proposed approach within the draft guidelines to broaden the definition of marketplace and lower the minimums of investment. Encouraging emerging platforms to the commissioning table should be the priority in this regard.

1.3 The most efficient ways to leverage investment from the market should be retained.

Two of the most efficient ways that Screen Australia has delivered its funding in the past have been fundamentally altered in the proposed draft guidelines: notional splits to broadcasters and the quarantined investment for international projects.

In regards to notional broadcaster splits, Screen Producers Australia understands that adjustments could be made to their proportions to allow for a larger contestable pool of funds to drive more competitive tension. However, their complete removal is an extreme response to perceived changes in the market.

Notional splits are flexible and can be made conditional on an agreed set of key performance indicators that outline genre priorities and minimum commercial terms based on the level of ask, budget and marketplace. They can be regularly reviewed and amended against criteria. The benefit is two-fold, enabling Screen Australia to set overarching curatorial guidelines whilst letting the marketplace negotiate deals with confidence.

It is also important to note that the cost of developing a program may no longer be something broadcasters are willing to support with the removal of these splits. This may occur for fear that the program might ultimately be rejected by Screen Australia. Again, incentivising industry to invest in itself is good public policy.

The primary evaluation criteria for Screen Australia's market-orientated programs should be based on the level of genuine marketplace attachment. This represents an objective measure of audience potential. In such cases where there is equal marketplace, in which the producers have been given an opportunity to try and improve the terms of their deal, then Screen Australia should evaluate on a broader criteria.

If levels of marketplace attachment are not the first consideration then there is a risk of duplicating highly subjective evaluation processes at a time in which Screen Australia and the public broadcasters need to demonstrate budget efficiencies.

In regards to quarantined funds for international investment, the concerns are more nuanced. There is certainly an upside in the draft guidelines. If combining domestic and international marketplace to trigger matched funding and empowers producers to explore new inward investment and export opportunities, then well and good.

However, there may be unintended consequences. There is a concern that in practice domestic broadcasters may not want to continue commissioning projects with international partners if there is no longer a specific contestable pot of money to fight for.

Screen Australia must not inadvertently kill off a very successful strand that has proven to attract overseas investment. Any reduction in international production as a result of program changes would be disastrous for the health of the industry. It would also be counterproductive to complementary support programs offered by Screen Australia that are designed to support producer's international engagement.

1.4 The implementation of new guidelines should be delayed pending for further review and refinement.

The cumulative effect of these concerns means that Screen Producers Australia recommends that there should be a delay in the implementation of new guidelines.

It is our view that the overall design of the draft guidelines needs revision and refinement. Pending the conclusion of this consultation we recommend that another funding round be conducted by Screen Australia under the current documentary guidelines. Ultimately, we also foreshadow the potential need for transitional arrangements for those projects nearing production that may be affected by the changes as a result of being developed with the existing guidelines in mind.

Screen Producers Australia appreciates the difficulties of responding to an evolving sector and understands the need to change and adapt accordingly. We remain committed to working through our concerns in detail with Screen Australia in order to navigate a path that strikes a better balance.

2. Observations on aspects of the draft guidelines

Although Screen Producers Australia recommends a delay in implementation, there are a number of observations that will serve as constructive feedback on specific aspects of the draft guidelines.

General eligibility requirements

- The cap on eligibility at 12 broadcast hours would appear arbitrary. This should be removed with eligibility requirements based primarily on the projects budget size, ask and level of marketplace.
- The blanket exclusion of foreign formats is inflexible and potentially harmful given their commercial potential. Whilst we understand the need to limit areas of investment, we would suggest that if these projects can demonstrate how they meet cultural and sustainability objectives, including potential value to the business, then they should be considered on a case-by-case basis.
- Further thought should be given to the eligibility of projects that are being resubmitted solely on the basis of exhausted funds at the time of original application.

Development

- The targeting of development funding to one-off and time-critical projects seems to be an arbitrary distinction and should be removed as a primary focus. It is of particular importance within the context of the draft guidelines with proposed removal of notional splits. This would likely result in less development investment by broadcasters for fear that Screen Australia may knock the project back if it applies for production funding.
- Levels of marketplace attachment should be relevant in the assessment for all projects applying for development, not only for time-critical funding.

Producer Equity Program

- Clarification is needed on how Screen Australia is intending to apportion the annual costs of the Producer Equity Program across the other programs.
- The proposal to exclude Producer Equity Programs from other Screen Australia funding is likely to leave a gap in the lower budget range. This will particularly affect one-off documentaries. Whilst this risk may be reduced to a degree through an increase in the grant amount, there is not currently enough detail in the draft guidelines to comment.

Vision and Voice

- The total allocation of funds to the Vision and Voice program should be capped at 10 per cent of Screen Australia's overall allocation to documentary investment. In the context of the draft guidelines, projects will have the increased flexibility of lower market requirements in the Meaning and Market program.

Meaning and Market / Premium Program

- The substantive removal of minimum licences fees will entice new marketplace opportunities that were previously unable to reach levels as set under the current guidelines, but it may inadvertently push budgets lower and reduce overall investment within the sector. A modest licence fee should be considered to apply pressure in leveraging investment from the market and assist in controlling the administration burden.
- Screen Australia should publish 'marketplace' criteria that must be reported against by any commissioning platform trying to access market-orientated programs. This is vital to demonstrate that their level of investment is genuinely based on a knowledge of, and access to, audience.
- Further clarification is required on the types of previous funding counted in the determination of the grant threshold.
- It may be possible to collapse Meaning and Market and the Premium Program into a single market-orientated program. The distinction between them appears to be predicated only on financial terms: budget level, treatment of international presales and Screen Australia investment cap. However, further clarification is required as to whether there will be additional editorial requirements to distinguish them.
- If they were collapsed, this would remove the almost impossible thresholds proposed under the Premium Program ($1 million per hour budget and $200,000 domestic licence fee/distribution advance). The combined program could ratchet the minimum licence fee/distribution advance based on budget, ask and level of marketplace. The notional splits should be then reinstated at slightly lower proportions to create a larger contestable pool to drive new commissioning opportunities and increase competitive tension.
- If retained, the overall allocation to the Premium Program would need to be increased significantly for the notional splits to have effect. There would also need to be the removal of the budget threshold and lowering of the domestic licence fee/distribution advance. Should the budget threshold remain at $1 million then the funds will risk being untapped. It will also remove the ability of broadcasters to commission tent-pole productions that are not predicated solely on budget size without the need for multiple commissioning and assessment processes.

- Screen Australia should consider retaining a quarantined program for international investment in addition to the increased flexibility of using international presales to trigger matched funding. Alternatively, if the Premium Program was retained there may be a way to meet a larger minimum licence fee/distribution advance through a combination of domestic and/or international presales.