

## THE GOOD, THE BAD AND THE POSSIBLE

Graeme Mason | Chief Executive Officer, Screen Australia

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### **[Introduction]**

Good afternoon everyone and thanks to Screen Producers Australia for inviting me to speak to your members and the broader screen community.

I want to acknowledge the traditional custodians of the land on which we meet - the Wurundjeri people of the Kulin Nation - and pay my respects to their elders past and present.

Australia has the ability to make fantastic content - AND REGULARLY DOES. We at Screen Australia are delighted to be able to assist and support you - our producing partners - to meet the shared aim of delivering compelling Australian stories to audiences.

We value our relationships with you all and we would like you to, no we **want** you to still be around to work with us. That's why I am going to use this public platform to talk very frankly about some matters that - in JK Rowling speak - could be classified as part of the dark and secret world of producers'.

- I'm going to discuss how Screen Australia would like financing deals to be more FAVOURABLE to producers - and from that for the Australian industry as a whole.
- Also to talk about the growing pressure on Screen Australia's production investment, how we ASSESS applications and how you can practically guarantee getting a green light. *That got your attention didn't it?!*
- Thirdly and finally, I'm going to canvass some new ways Screen Australia MIGHT allocate its funding in these changing times to make life better for you, for us, and to help continue to make great content for audiences.

The divisions between film, digital and TV are blurring, impacting on traditionally quite distinct financing and production models. Many companies now work across forms. We are in an industry that always has had its challenges: some quite specific to a part of the sector, some broad, many now threatening to become broad, and all of them complicated.

Television has many specific challenges, at least in scripted and documentary/factual, the areas Screen Australia is involved in. *For a start, buyers want more for less money.*

A key difference in mediums for us, however, is that Free-to-air and subscription television broadcasters sit more clearly between the audience and us. Film distributors/exhibitors do also but television players have a more pivotal and profound role in the model we work under. Again in business terms they have much more at stake. This changes the dynamic for us working with you in these areas.

The annual drama report, published this month, noted that the TV industry provided 53 per cent of total production expenditure for the TV drama slate in 2015/16. In contrast, government finance was the biggest component of feature funding and documentaries - especially including state broadcasters. There's also a lot more TV drama made without having Screen Australia involved than there is film.

In TV this can make Screen Australia's position somewhat complicated. Beyond Drama, Documentary and Children's have some very real issues for producers, distributors and us,

but, it must be said, that out of everything we do, currently narrative features give us the most sleepless nights. More on this later.

When you want to deliver BAD NEWS - *sobering news is in fact more accurate* - the textbooks say deliver GOOD NEWS first. Thankfully, there's NO shortage of good news.

- Firstly, I salute the quality of the work. It has great cultural and other value. As the Minister told us yesterday, film and TV also has tremendous economic value. Australians certainly get their money's worth. The contribution of local production component of our sector alone in 2014/15 was \$3 billion and 25,300 full-time jobs. And it drives tourism. And is arguably our best soft diplomacy tool internationally.
- Ratings are well worth celebrating. *Molly, Here Come the Habibs!, Wanted, The Doctor Blake Mysteries, The Secret Daughter, Doctor Doctor* and *Home and Away* all Aussie TV drama hits in 2016. Congratulations to all. Each at times has averaged more than a million viewers in the consolidated five-city metro ratings - *Molly* got nearly three million viewers with regional and 28 day figures. It is fascinating to see how catch-up is changing audience behavior, and streaming is taking shows to different (younger audiences) than traditionally as evidenced by *Cleverman*,
- Australian films are doing well in cinemas. This year's numbers won't be as good as 2015 but that's a lot about timing. *Hacksaw Ridge* is currently wowing audiences here and abroad and stand by for *Red Dog: True Blue* and *Lion*.
- Our films keep on attracting attention from A-list festivals - very important for sales & careers. Our TV shows and formats are selling around the world. And the international focus on all aspects of our content creation is intense and exciting.
- The numbers on some of our multiplatform work are through the roof. The most successful content creators in the Country the Racka Racka's, video *Marvel vs DC* has had 41 million views across platforms! The last 4 years of our supported Digital Content has now had a staggering 2.5 Billion views.
- The amount of overseas money flowing in to some local films is extraordinary. At times more than 50% of the budget.
- Massive shifts in the marketplace and new platforms worldwide have brought ABUNDANT opportunity. Yes there is a tsunami of content out there but distinctive film and TV that takes risks and is a cut above WILL connect here and will travel.
- Some of our new programs and initiatives have had an extraordinary response from industry and the community, particularly gender matters and our groundbreaking Diversity research. Over time, I believe these will be a game changer for audiences and society.

I say there's NOTHING we CAN'T do if we apply ourselves and work together. Our most entrepreneurial producers prove that. They know what's happening worldwide and are always hunting down new players and newly active players. They build ongoing relationships. They stay open to new ways of doing deals and making content. I admire and am inspired by them. Much better still, their work inspires AUDIENCES. These people and their work also have the best chance of seeing their efforts rewarded financially.

*I've got something else in my good news basket.* Australia is the envy of other countries because of two key things many of you with Screen Australia and legacy agencies battled to achieve:

- The producer offset is equity - equity that belongs to the producer - as per the explanatory memorandum attached to the legislation. It is not a tax credit: tax credits don't equate to equity. It should be recouped alongside other equity and recognized in the financier's 50% net profit share. *It's called the producer offset after all!*
- Also, Screen Australia has very successfully quarantined Australia and New Zealand. What I mean is it's fought to prevent REST OF WORLD investors and lenders from getting access to any revenues out of ANZ. Many of our projects over-perform locally compared to international. *Several projects are making back reinvested or deferred fees and / or getting overages right now out of ANZ. If rights had been crossed, this wouldn't be the case.*

### **[Outlining concerns on deals]**

It is imperative we don't let erosion occur on either front. And here comes the sobering part. The market in a variety of ways is "spooked". *A sales agent said that on our Screen Intel site and it sums things up well.*

The market is spooked AND it's contagious. Many Agents, Financiers and Distributors are looking for easy targets and ways to defend their own positions. As the lines are drawn, some Australian producers are not positioning themselves well. Beyond caring about you - AND WE DO - this MUST be addressed on projects involving Screen Australia period. Whilst we would strongly advise against it, you can of course do what you like if you're NOT using Screen Australia's money, but not if you are.

How revenues flow from the exploitation of rights is determined by the deals. You know that: handling the business and overseeing creative is what you do. But judging by the deals coming to us, some producers seem to have been coerced into putting aside business realities.

We can't achieve our creative and cultural aims without you. You can't keep producing unless you survive financially. And your sustainability is vital to the health and resilience of everyone in production long term. I need you to step up and we WILL back you.

It is imperative that we - AND I DO MEAN WE - are smarter in our deal making so there is a share of recoupment and, if we're lucky, a share of profit if it happens. This revenue is a buffer against setbacks and a guarantee you can keep developing and producing material.

If for you it is in fact just about the one fee in the one budget then we need to all think again. We would all need to accept that for many of you the future is without question very shaky. It also would fundamentally change one of the two foundations underpinning the Federal Governments support of the sector.

I don't particularly want to wag my finger at producers but I think it's worth spending some time on a couple of deals we've seen lately. Deals we condemn not condone.

- Head of production Sally Caplan has spent a lot of time and effort and unpicked and reassembled several deals of late. In one, if the film turns out to be a global hit - *if it does the numbers that, say, Saw did* - the creative team would get NOTHING back had we agreed to the original deal.
- Recently we had a project where a FINANCIER was promised final cut. What a terrible precedent. If the film goes into profit, they also get 10 per cent of the producers' share in perpetuity after recouping all investment, interest and a major premium. And their contribution is just 4.5% of the budget.

- In both TV and Film, We're seeing a lot of creativity applied to the NAMING of various financing charges - charges that add up to tens of thousands of dollars. Then there might be an executive producer fee on top and a sky-high interest rate. All in the budget to be funded and being part of recoupment affecting us and the Producer.
- Some international partners are trying to pass off gap financing as equity. They're still recouping in first position and charging a premium, charging the same financing fees and interest rate as if it was gap, PLUS trying to elbow in on the back end. *"Gapity" is the term Sally Cap is pleased with herself for inventing.*
- Some distributors and sales agents are getting greedy on commissions and sneaking through dodgy definitions of certain rights - burying airlines in ancillaries for example. And watch out on the expenses front. And don't think we won't notice if the distributor's executive producer fee just happens to be the size of the advance.
- Three years from delivery to getting the distribution guarantee, anyone? Think of the interest payments. Delivery items doubled or more and costs all on the Producer.
- Some producers are also being railroaded into asking Screen Australia to sweep aside long-held terms. No, we don't actually expect or want to be subordinated when it comes to our equity recoupment position. This should be an exception; perhaps allowable to some degree for a private investor putting in the lion's share of the budget. Giving it up straight off, or worse all together, as per more recent requests, no.

As I've said, a lot of money is flowing in from international but please don't sell the farm to get it. We get that distribution entities are facing challenges, we do look at the industry as a whole. I don't have the data to say if there's a spike in deals that make us uncomfortable but I've been at the agency for three years and my memory is that only the odd terrible deal was presented when I joined. Now in some funding rounds, every second deal seems bad - for all of us.

### **[The producer offset]**

Let's look at this most important of federal government supports and hone in more on how Screen Australia is increasingly disturbed at **how** quickly it seems to be given away.

The intent has always been that the portion cash flowed into the production budget is the producer's equity. On features and TV drama we expect it to be at least 90 per cent of the projected value of the offset. As our terms of trade say, the producer's recoupment share and position is expected to be commensurate with this equity position. It's why the offset exists.

Yes, like any equity, it can be used as a bargaining chip to get projects financed. Maybe the producer takes a lower position in the recoupment waterfall, or trades it for any number of good real reasons. But no one should make you give it up or not recognize it at all. It's not there for studios, broadcasters, financiers or gap lenders. With the offset and direct funding from State and Federal agencies, you could be bringing substantial money to the table - 70 per cent of the budget in documentary, 65 per cent in film, 40 per cent in TV. **WIELD THAT POWER.** Have this money acknowledged.

You could say it is the producer's prerogative to only work for fees, to NOT have skin in the game. But isn't that setting yourself up to fail in the longer term, especially if you're only

producing occasionally? Perhaps you're independently wealthy or lucky enough to have an alternative income source. Perhaps you're crazy. *I think a combination of all three is often good.*

I should make it clear that producers aren't doing anything in direct opposition to our guidelines or terms of trade - *unless side deals are being done behind our back that compromise our good faith provisions.* But please go in with eyes wide open. Do the due diligence. Check if better deals are available with other parties.

This is not all about the individual project: if many deals are creating the perception that the producer offset is up for grabs, there's a knock on effect, a precedent. It negatively affects the negotiating position of OTHER producers. What you do can have POLITICAL ramifications across the sector, putting the INTENT of the producer offset legislation at risk.

Does the partner, domestic or foreign, not understand the intent of the support? Sally and I have been in two meetings recently where people thought all government money was soft, a location incentive - including Screen Australia's! Tell us if we need to message better or differently to ensure this confusion is not possible.

In the case of television drama the producer offset is not being traded away SO readily. However, with the same lenders and funders and shared parent entities of film and TV distribution companies popping up through vertical integration and blurred lines watch this space.

Television producers are certainly not immune from marketplace pressure.

- Free-to-air TV is still the leading way to get content - and advertising - out to the biggest audience. Our drama is much loved but straight overnight ratings are falling across the board because of changing viewing patterns. The commercial networks have less ability to maintain advertising revenue and therefore invest in your content. They expect new seasons of series at the same quality for smaller budgets. We and others have traditionally been less invested in second series, if at all. Many of you in this room have had to accept smaller fees and cuts to overheads as a result.
- Producers are getting caught in the intransigent behaviour of some global broadcasters worried about new players and platforms. Some projects have nearly fallen over because of rights grabs, compromising Australia's ability to capitalize on lucrative global opportunities. *International sales on several of our TV dramas is phenomenal. Should producers try and bypass traditional media at times?*

#### ***[Screen Australia in the equation]***

Many film and TV producers - experienced and not - expect and want us to police deals. We CAN do this and will do it WITH you. That's my way of saying you have to be prepared to hold your ground and not back out leaving us high and dry and the enemy of all.

There can be significant upside to limiting your ask on Screen Australia to \$500,000 or less. That way the funds are regarded as a grant. That grant can go into your project as your equity and we don't require repayment or a share of net gross receipts. But many want a bit more mainly because it then becomes investment and we wade into the negotiation with a big stick.

As an aside here, we did the grants to make it simple for all concerned, incentivize people to take this money on the terms offered and we took significant overhead out of our legal

process, but, now we are having people want to negotiate all terms on this standard grant making it illogical for us to be offering it.

For TV producer's investment means the minimum \$440,000 per broadcast hour and our other terms apply. To the broadcasters here: no that fee is NOT equity. It buys a licence for local rights for your platform and a bit of catch-up only. It doesn't cover broadcast rights in other territories or transmission rights on subscription, SVOD or other platforms.

Films from ANY country rarely turn a profit. Very few of our dramas or docos travel so well you can retire. *Luckily Screen Australia's key motivation for investing is cultural.* SCARCITY of profit however should give producers MORE not less reason to stay strong on financing deals and recoupment schedules - and a lot of reason not to invest fees or give up on terms hard won by people and agencies that went before.

See us EARLY if you want help with deals. Sometimes it's puzzling, sometimes infuriating, when people ask about Screen Australia's right to question deals. We hold a lot of knowledge and experience. We will have seen 150 deals in the previous 12 months and you may have only seen a couple. See us early, NOT after you have broadly agreed a deal, forcing us to reassemble it if we want to positively respond to your application.

And bear in mind that projects take months to close and you MUST allow for that. If you're in pre-production it is MUCH harder to hold out. And you will end up in a pickle between all the investors and lawyers.

Deals are as much Screen Australia's business as the producers' for another reason. The more revenue going to producers, the more flowing into the industry. Everyone gets more work and the cycle expands. Similarly, the more coming back to us, the more we have to reinvest.

We do NOT throw our weight around for FUN. We would like nothing better than to NOT have to police deals. We'd prefer to spend our time thinking about what film and TV projects deliver best for Australian audiences and have the best creative ambitions ...

***[Demand for funds is growing]***

We really need to once more stress that the demand for Screen Australia production funding is steadily rising. In the first year of operation, 2008/09, there was a flood of applications. Since then, between 2009/10 and 2015/16, numbers of applications for features and TV drama have steadily risen.

This year applications will probably be DOUBLE what they were eight years ago. In the most recent film investment round we funded seven out of 22 applications - and not necessarily to the level applicants wanted, because our funding is decreasing. In a middle of the year round there were dramas from every network. And documentaries.....

Competition is INTENSE and likely to get more so. Please recognise the funding pressure we're under and examine our motivation for investment. In general I'd say producers who don't deeply understand that OUR reasons for investing can at times be very different to their reasons for WANTING us to - make things very hard for themselves. We need applications to deliver on:

- Quality
- Innovation - that is content that pushes the envelope ...
- Culture
- Careers
- And on some projects, we want commercial gain.



Finding audiences is what CANBERRA responds to. And financial return to Australia is a pretty good indicator that something has hit the spot and had a cultural impact.

Now I've got to the bit where I'm going to advise you on how you can practically guarantee getting a green light.

If you turn up with exemplary content that suits Screen Australia's reasons for being and the interests of the market, if you convince us you can deliver, and if you bring us deals that are fair and reasonable, your project will be financed and your sustainability has the best chance of looking after itself. *Isn't that simple!*

Light heartedness aside, many scripts that come to us are not as good as they can be. Mostly deals finance plans and production schedules are not making total sense. Sometimes there's financial pressure on producers to roll cameras, or the cast has a small window, or the distributor has a hole to fill NOW, but going into production without the best script does no-one any favours.

SCRIPT IS EVERYTHING. If the work isn't exemplary we WILL move on to better projects. We will not be part of something set up to fail. Festivals won't take films that don't measure up. Cinemas won't book them. TV Audiences won't go looking for them or will turn over. The reputations of the key creative team may suffer. Investors will never get their money back.

Poor content doesn't work on any meaningful level. Especially in today's funding and viewing environment.

Picking winners is subjective, but someone has to do it. We have the benefit of seeing more projects than anyone else.

Recently we invested in a film that five substantial companies were competing for even though it was by a first time director. We have had TV dramas that got no notes from any internal or external assessors or the market. That's how good the concept and the script were. We want more projects that good. In MIPCOM last month people raved about our talent in all areas. The expectation is that one of our scripted shows WILL pop globally and there was surprise that they haven't yet.

Let's rise to the challenge and make a concerted effort to build the local industry. Let's use our talent rather than watching producers in other places use that talent to thrive. We all benefit from each other's success.

I imagine some of you are muttering about how tough the market is, how I'm not the one out raising money. You're right. But as I've said, significant funding is flowing in to some projects and we have a lot of world-class talent, facilities and funding. You are going out with higher % of funding - from we on behalf of the federal government and state governments than anywhere I can think of. So I ask you: Are you developing projects the market wants? Are your concepts and your scripts good enough?

And again, you only have to play by our rules if you are coming to Screen Australia for funding.

***[Options for discussion]***

Screen Australia is a giant market manipulator. It would be naïve to think otherwise. I've already talked about how the agency over the years has held the line on the producer offset being equity and on not crossing rest of world and ANZ rights.

In this changing world what else could we do, what else should we do? We could throw our guidelines and terms of trade out the window and rewrite them. Should we? I'd like to work out TOGETHER if that would be of benefit. Ditto changes to our policy advice to Canberra. As you ponder this, please remember, however, we are asking about changes that would be of benefit to the sector not just an individual project - and of course be clear on the state of the market and what you are suggesting - is it even possible, is it feasible, can we influence it?

I'm going to get the ball rolling with some OPTIONS we've been talking about in-house. They are driven by the necessity to be tougher on deals, to improve quality, to cope with the pressure on funds. *And we the fact that we should constantly interrogate what we do and why we do it.*

- We could introduce a system where teams pitch to a carefully selected industry panel - *distributors, the country's best script editors and outstanding practitioners perhaps*. If the script subsequently lives up to the promise of a compelling pitch, the agency could help put together the financing. In other words, we'd be first in with gusto, not last in.
- If we had unlimited staff we'd say 'Send us your scripts any time'. Pitching would allow the agency to throw the story net wider. In this scenario there might or might not be a fund for what we now call 'talent escalators' ...
- Perhaps it's time to identify what constitutes a commercial project and cut them loose for the producer offset to take care of. We dug out a 2007 media release from the two then relevant ministers, Senators Helen Coonan and George Brandis. It said that the then new producer offset would become the primary source of funding for projects with commercial potential and that the major priority for Screen Australia would be projects of national cultural significance unlikely to attract the necessary private finance to proceed. The examples given were documentaries, children's programs, new producers' work and indigenous content. The global financial crisis was blamed for the producer offset not being enough but that's now years ago.
- Perhaps Screen Australia should rule that it won't invest in projects over a certain budget. It is a very positive sign when distributors and sales agents signal their faith with a bucket of cash but our money sometimes seems like a drop in that bucket. Or on the other side should we rule out being in projects under a certain level and leave to states, other entities and credit cards.
- We are much more hands off TV drama compared to other investments, but with the big increase in demand we have to RETHINK our role. Should TV assessments be made on the same basis as documentary and film? Should they be about mass or niche audiences? Business sustainability? Intrinsically Australian stories?
- We could keep the system as is but use a much tighter policy framework. We could require a certain level of marketplace money relative to budget; or explicitly rule out projects where too much of the producer offset goes to others; or where rights are crossed; or where someone has world or multi territories for less than 40 per cent of the budget. This is not good for our flexibility but producers would walk into negotiations with a base position, revenues would probably grow, and everyone would understand the value of our money and the caveats attached. Many of our sister agencies around the world are doing this now.
- Should all Screen Australia funding be grants? But the same terms of trade?



- Or the reverse and make all equity and firm terms which all people would know from the get go.
- Should we encourage more co-productions with a separate door: they unlock finance from other jurisdictions; attract bigger audiences worldwide; and encourage producers to look outward and build global partnerships and businesses. We will always be true to Australia and the Australians paying for the content, but do we focus more time and attention on local stories and creators with global ambitions and possibilities? *Our biggest percentage return on investment? Answer: Top of the Lake.*
- Should Screen Australia relax the focus on the producer as the stakeholder at the application stage? *Please hold off on the rotten tomatoes given I'm at SPA.*
- Let's consider all possibilities. We are trying to give producers more information on deals and revenue flows so they have a measuring stick. How far do we go? Should Screen Australia funding be conditional on confidentiality clauses being removed?!

More people around the world are watching content from anywhere and we have the big advantage of being an English-language producer. We can get a share of the spoils by working hard and together.

As an industry how do we have conversations about the future: where growth is likely to come from, new recoupment models, different forms of digital content? etc etc.

Of course we have to carefully consider the implications of ANY change very carefully. Should an industry think tank be convened to discuss all these big issues?

Screen Australia can change how it does what it does quickly compared to making changes to the producer offset, which requires legislative amendment. But now is a good time to examine the offset too because of next year's 10-year review. We're in discussion with government and the department about this now.

### ***[In conclusion]***

I genuinely want to hear from the producing community on how we build on the strength of our industry and provide the highest possible value to audiences. What would you do if you had a blank piece of paper? *Please park your own projects to one side before answering!*

There's fundamental question for the producing community and SPA:

- What should Screen Australia's role be in deals? Should we kick butt or butt out? Both have consequences. If we butt out don't accuse us of not protecting your interests when you're not getting a decent slice of the revenue after some hot sales. If we kick butt and stop you getting railroaded you must have a Plan B or accept a project may fall over.
- How do we ensure deals are as good as they can possibly be? And enlighten the industry in terms of good, bad and ugly deals?
- How do we best address the issue of too many applications?
- How do we ensure scripts are as exemplary in order to get exemplary content?

I think there is a lot of sense in having more consistency between how we fund TV, film and documentary. Having more caveats on government funding could help us help you.

The Federal Government entrusts us with a chunk of funding to support the screen industry and we take that responsibility very seriously. If you want our money it comes with strings

attached to fulfill our goals, to satisfy audiences and to protect Australian screen businesses.

**I look forward to talking about options for us, you and the future of the business of making great content.**