



INVESTMENT GUIDELINES

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Draft

Investment Guidelines 2004/2005

These investment guidelines summarise the FFC's funding policies. They are intended to provide transparency for producers, while retaining flexibility in relation to the funding of individual projects.

Producers are encouraged to contact the FFC for advice on projects at an early stage, especially before negotiations commence with potential co-financing and distribution partners.

The investment guidelines are reviewed annually. Producers should check with the FFC to ensure they are consulting current guidelines, as aspects of the guidelines may be amended from time to time.

The FFC has the discretion to reject any application for funding.

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1. BACKGROUND

The Film Finance Corporation Australia Limited (FFC) was established in 1988, to support independent filmmakers in producing a diverse range of Australian film and television programs for the benefit of Australian audiences.

The FFC is a wholly owned Commonwealth company operating under a memorandum of association, a Ministerial mandate and objectives, a board of directors and a corporate plan.

The FFC finances the following types of programs:

- feature films;
- mini-series and telemovies;
- children's mini-series drama;
- documentaries.

1.1 FFC Mission Statement

The FFC's mission is to strengthen cultural identity by:

- supporting a highly professional and creative screen production industry;
- entertaining and informing Australian audiences with a diversity of screen images;
- showcasing Australia's screen production industry to the world.

1.2 FFC Appropriation

For the financial year ~~2003/04~~2004/05 the FFC will receive \$50 million in base funding from the Government, as well as \$10.5 million in additional Government funding directed specifically to adult and children's television drama.

Its total funds for the year also include monies recouped from FFC projects active in the marketplace.

1.3 Non-FFC Finance

The total slate of projects backed by the FFC each year is financed by a combination of FFC funds and finance from private investors and other marketplace participants.

In order to maximise production levels and diversity of slate, the FFC seeks to leverage its funds as much as possible through marketplace and investor co-finance. It therefore encourages producers to secure as

much non-FFC finance as possible and, where projects are being assessed on a competitive basis, will give preference to projects seeking a lower proportion of FFC investment.

Note: this provision will not apply in the case of:

- the Project Evaluation door for feature films (Section 3.2);
- the Emerging Children's Producer Fund (Section 6.5);
- the documentary Filmmaker Innovation Fund (Section 7.5).

~~The FFC aims to secure a minimum level of non-FFC finance in its production slate. In 2003/04, the minimum target is 45 per cent non-FFC finance.~~

1.4 Composition Of Slate

To ensure a spread of product across program categories, the FFC sets targets for the amount of its total funds it will spend in each program category. The targets for ~~2003/04~~2004/05 are:

- 55 per cent for feature films;
- 30 per cent for television drama, plus an additional \$10.5 million directed specifically to adult and children's television drama by the Government;
- 15 per cent for documentaries.

These targets act as guides in the allocation of funds at the start of each financial year. The FFC monitors its investments in order to meet the targets but recognises that market factors will influence their achievement. The FFC reserves the right to re-allocate funds between program categories if the need arises.

1.5 Funding Criteria

The criteria used in assessing projects are set out in these Investment Guidelines. In summary, they are:

- Marketplace attachment
 - level of genuine marketplace attachments as a percentage of the budget
 - appropriateness of marketplace attachment for program category
 - commercial terms
- FFC investment
 - amount of FFC investment
 - level of subordination of FFC investment
 - FFC recoupment prospects

- Creative, commercial and audience potential of project

- Commercial and critical track record of the creative principals
- Level of participation of Australian personnel

These criteria will be applied with consideration to the FFC's overall brief of achieving a diverse, culturally relevant slate, including a mix of experienced and emerging personnel and a range of budgets.

2. GENERAL FUNDING CRITERIA

2.1. Qualifying Australian Films

The FFC provides financial support to feature films, telemovies, mini-series or documentaries ("eligible films") that have been issued a provisional certificate under Division 10BA of the Income Tax Assessment Act.

Under 10BA the eligible film will be either:

- made wholly or substantially in Australia with significant Australian content; or
- an official co-production made under a treaty or similar arrangement.

Applications for provisional certificates and advice on certification are available from the Department of Communications Information Technology and the Arts (DoCITA).

For co-productions, DoCITA may only issue a provisional certificate once co-production status has been granted by the Australian Film Commission (AFC).

2.2. Methods Of Funding

Under its Memorandum of Association, the FFC can assist in financing qualifying Australian films and television programs by:

- undertaking investment;
- acquiring, obtaining, dealing in and exercising rights;
- making or participating in loans (including print and advertising loans); investment guarantees, and underwriting agreements;
- leading or participating in loan syndicates and similar joint ventures.

2.3 Funding Limits

The FFC wishes to ensure that its funds are spread amongst the production community and not unduly concentrated in the hands of a small number of companies. At the same time, it recognises the benefit to producers of sharing overheads and the value to the industry of having diversified production/distribution companies.

To support both these ends, the FFC reserves the right to monitor its annual funding slate to ensure that no imbalance occurs.

2.4 Allocation of FFC Funds Through the Year

The FFC wishes to ensure that its funds generate production throughout the financial year. Where demand from eligible projects has the potential to absorb the majority of the FFC's funds in any program category early in the financial year, the FFC reserves the right to allocate its funds for that program category in two half-year tranches.

2.45 The Budget

The FFC, in consultation with the completion guarantor, will examine a producer's schedule and budget to ensure that the production values in the script can be realised.

The FFC requires budgets to be presented in the 2003 AFC budget format, available from the AFC website (www.afc.gov.au).

- Fees should comply with industry norms. They will be considered in the context of the budget and track record of the personnel.
- The cost of production, both above and below the line, should reflect the level of recoupment that the project can reasonably expect to earn.
- The FFC will have approval over any variation in budget items which are exclusions under the completion guarantee (music, cast etc).
- The budget should include overheads for producers, to be calculated according to clause 10.8.
- Delivery items must be included to cover the standard requirements of all sales agents and distributors in place at the time of contracting. In the case of feature films, this includes the following minimum budgeted amounts:
 - test screening \$20,000
 - trailer \$30,000
 - poster \$7,500

- If the budget contains foreign currency items, a hedging mechanism to allow for currency fluctuations ~~should~~ must be included in the budget.

~~• The FFC supports the use of test screenings for feature films and encourages producers to include this item in their budgets.~~

If producers have any questions when preparing a budget, they should contact a project manager in the FFC's Sydney or Melbourne offices.

2.56 Experience Of Key Creative Team

The FFC will finance projects with inexperienced personnel attached where there is an appropriate level of experience in key positions.

Where the FFC believes that a production requires more experienced personnel, it may make the producer's appointment of such personnel a condition of investment.

3. FEATURE FILMS

~~The FFC provides support for feature film production through several different financing streams, as detailed in 2.2 above. The FFC welcomes an entrepreneurial approach by producers to film financing and will consider a diversity of financing streams (as detailed in 2.2 above), including equity investment, distribution guarantees and marketing loans.~~

~~In 2004/05, the FFC will offer two doors of entry to producers seeking to finance feature films:~~

~~[3.1 Market Attachment](#)~~

~~[3.2 Project Evaluation](#)~~

3.1 Market Attachment

~~Projects applying through the market attachment door must demonstrate a high level of genuine market support to trigger FFC investment.~~

3.1.1 Level of market attachment

~~The FFC requires a minimum of 30 per cent of the production budget to be guaranteed by genuine market participants. This may take the form of:~~

~~– distribution advances/guarantees from distributors or sales agents~~

- pre-sales from Australian free-to-air or pay television (equity investment does not qualify)

3.1.2 Type of market attachment

Market advances/guarantees must include:

- an Australian theatrical distributor
- a distributor in at least one major territory
- an international sales agent

3.1.3 Level of FFC investment

The FFC will give preference to projects seeking an FFC contribution of 35 per cent of the budget or less, and will not contribute more than 40 per cent. The remainder may be a combination of genuine market attachments (as in 3.1.1 above) and other non-FFC finance (eg. tax funds, state agency funds, private investment, broadcaster equity etc.).

3.1.4 Official Co-productions

As co-productions have access to more than one domestic market, they must bring a higher level of genuine market attachment – at least 35 per cent – to the budget.

Market advances/guarantees for co-productions must include:

- a theatrical distributor in each co-production territory
- a distributor in one other major territory
- an international sales agent or distributor

The FFC will generally not contribute more than 30 per cent of the total budget of the project.

3.1.5 Cap on Investment

The FFC will generally not invest more than \$5 million in any one project financed through the market attachment door.

3.2 Project Evaluation

Project evaluation is the second FFC option available to producers seeking to finance feature films.

3.2.1 Criteria for Evaluation

Projects applying via this door will be evaluated by the FFC (including specialist staff) to determine their merit in three key areas:

- (i) Creative Potential
 - track record of creative team

- creative team's vision for the film
- distinctiveness of project
- quality of script and readiness for production
- proposed cast

(ii) Market Potential

- potential to secure distribution in Australia
- potential to secure distribution overseas
- budget in relation to projected returns

(iii) Audience Potential

- target audience/s
- potential to reach target audience/s
- potential to reach international audiences

3.2.2 Diversity of FFC slate

When evaluating individual projects the FFC will also be taking into account its overall objective of supporting a diverse feature film slate. Factors under consideration here include:

- the balance of experienced and emerging creative principals attached to projects in the slate;
- the desirability of financing some projects of artistic and critical merit that may have limited commercial potential;
- the desirability of having some diversity of genre within the annual slate.

3.2.3 Process for commitment by FFC

- Projects with the strongest creative/market/audience potential will be selected by the FFC based on the criteria listed above. Priority will be given to those projects that, in the opinion of the FFC, are the most ready for production.
- Once selected, each project will receive an FFC Board-approved Letter of Intent, setting out the preferred minimum levels of distribution and co-finance that will trigger an FFC commitment to finance. These minimum levels will be determined by the FFC on a case-by-case basis, taking into account the budget and market potential of the film.
- The FFC will then support the filmmakers in securing domestic and international distribution appropriate to the budget level of the film. All projects will need a domestic theatrical distribution deal and an international sales agent. In the case of higher budget projects – generally defined as more than \$4 million – the FFC will generally prefer a distribution deal in one or more key territories.

— Once the preferred minimum levels of co-finance have been secured, the project will be presented to the FFC Board for a formal FFC commitment to finance the film.

3.2.4 Applying for Project Evaluation

All projects applying through the Project Evaluation door must have a qualified producer, director and writer attached. Producers and directors can only be attached to one project at a time.

The filmmakers should submit the following to the FFC with their application form:

- Full CVs of the creative team
- Final draft script
- Statement of creative team's vision for the film
- Proposed casting
- Analysis of target audience/s for the film
- Any expressions of market interest
- Budget
- Production schedule

Based on the material supplied, the creative team may be invited to discuss their project further with the FFC.

Once evaluated, projects will be divided into three groups:

- (i) Projects to receive a Letter of Intent from the FFC (see 3.2.3);
- (ii) Projects that the FFC may consider financing once they have undertaken further development;
- (iii) Projects rejected by the Evaluation process.

The evaluation of the creative potential of the project will necessarily be a subjective one. The FFC Board's decision in this regard will be final.

All producers will receive a letter from the FFC informing them of the decision made regarding their project. The FFC's intention is to provide this letter within three months of receiving an application. However, during the start-up phase of Project Evaluation, it may take slightly longer to provide a response.

Re-submission: Projects rejected by the Evaluation process (as in 3.2.4 (iii) above), and seeking to re-apply, may have to wait 12 months before putting in a re-submission. Projects will only be accepted for a subsequent Project Evaluation where substantial changes have been made – either to the script, the creative team or the financing plan. The material supporting any re-submission must clearly indicate these changes.

Applications for Project Evaluation may be made at any time. Evaluation will be an ongoing internal process and will not be subject to rounds.

3.3 Prints and Advertising (P&A) Loan

The FFC may consider funding in the form of a prints and advertising loan on a case-by-case basis. Generally, the purpose of this type of funding is to increase the value of projects in the marketplace.

P&A funding will be in the form of a non-recourse loan, with the FFC recouping its loan in first position from theatrical exploitation and then from all other rights in the territory if a deficit remains.

4. LARGE FORMAT PROGRAMS

This section refers to documentaries and feature films in large format.

The FFC will consider large format programs on a case-by-case basis. Producers should consult the FFC as to the appropriate investment criteria.

- The FFC will generally not accept a subordinated recoupment position and will expect its risk to be shared on similar terms to the other investors.
- The FFC requires that the project has a guaranteed theatrical release in Australia, as well as in a number of international venues, on terms acceptable to the FFC.

5. ADULT TELEVISION DRAMA

5.1 Eligible categories

The FFC will finance the following categories of adult drama:

- Mini-series up to eight hours in length;
- Single telemovies;
- Telemovie packages of up to three telemovies. Subsequent series of telemovie packages will only be financed if the previous series has secured acceptable international sales;

- Animated mini-series of up to 13 episodes, each not less than a half-hour in length.

5.2 FFC funding

The FFC welcomes an entrepreneurial approach by producers to financing and will consider a diversity of financing streams (as detailed in clause 2.2), including equity investment and distribution guarantees.

In order to maximise production levels and diversity of slate, the FFC encourages producers to secure as much non-FFC finance as possible. Where projects are being assessed on a competitive basis (ie. where demand from eligible projects exceeds available funds), the FFC will give preference to projects seeking a lower proportion of FFC investment.

The FFC will generally invest no more than \$4 million in a single adult drama project.

~~Rising production costs and falling international sales have made it significantly more difficult for producers to finance adult television drama. In recognition of this, the FFC wants to take a more flexible approach in supporting producers and broadcasters in creating a financial model beneficial to all parties.~~

~~The FFC will seek to gear up its limited funds as much as possible through co-finance from broadcasters, private investors and other marketplace participants.~~

~~As an alternative to equity investment, the FFC may consider putting up a distribution guarantee to a maximum of 60 per cent against the world, including Australia/New Zealand. Initially it will only consider allocating approximately \$5 million of its total adult television drama funds for 2003/04 to this type of funding.~~

5.3 Level of FFC Investment

For adult mini-series and telemovies, the FFC will generally invest no more than 50 per cent of the budget.

However, the FFC has the discretionary power to invest a greater percentage in certain cases and will take into account the creative and commercial track record of the team attached to a project, cultural relevance to Australian audiences and availability of funds.

5.4 FFC recoupment split with producers

To support producers in building viable businesses, the FFC will share the funds it recoups from each project with the producer, from first dollar.

The share will be calculated on a sliding scale that remunerates producers for bringing non-FFC finance to the project.

The percentage share of recoupment from first dollar will be as follows:

- Where the FFC contributes more than 45 per cent of the budget: 20 per cent to the producer/80 per cent to the FFC,
- Where the FFC contributes less than 30 per cent of the budget: 50 per cent to the producer/50 per cent to the FFC.
- Where the FFC contributes 30-45 per cent of the budget, a sliding scale will apply. [The producer's share will increase by two per cent for every one per cent less required from the FFC.]

5.45 Marketplace Attachments

The FFC encourages producers to pre-sell their television projects in as many territories as possible.

(a) General

The FFC requires a local presale for Australian free-to-air or pay television rights for all adult drama programs. In regards to the presale:

- runs are not to exceed four over a seven-year period;
- the floor price licence fee (see below) may not include an equity component for the broadcaster;
- the FFC will not agree to the inclusion of pay television or exclusive satellite rights as part of the domestic free-to-air television licence fee;
- the FFC will not agree to the inclusion of New Zealand as part of the floor price licence fee.

In addition to the local presale, the FFC will require a sales agent for ROW to be attached on all projects.

(b) The FFC expects that the domestic network attached to the project will have signed off on the script when submitted to the FFC

(c) Mini-series

The FFC will expect a local free-to-air or pay television presale of not less than 30 per cent of the budget, with a floor price of not less than \$400,000 per hour.

It will also expect a percentage of the budget, to be agreed upon, by way of a substantial presale/advance against ROW, and/or equity investment.

The terms for any sequels or spin-offs ~~will be as for telemovies and telemovie packages (see below)~~ are detailed in clause 10.5.

(de) Telemovies

- *One-off telemovies (including pilots) and telemovie packages*

The FFC will expect a local free-to-air or pay television presale of not less than 35 per cent of the budget, with a floor price of ~~\$800,000~~ 400,000 per hour.

It will also expect a percentage of the budget, to be agreed upon, by way of a substantial presale/advance against ROW, and/or equity investment.

Telemovies pilots will be given lower priority than other telemovies or mini-series.

The FFC will only invest in a pilot if satisfied that the script is written as a self-contained story capable of being marketed as a 'stand alone'.

The terms on which the FFC will participate in revenue from any sequel or spin-off series are detailed in clause 10.5.

- ~~-If a series, \$5,000 per episode for the first series and \$7,500 per episode for subsequent series.~~
- ~~-If a telemovie, mini-series or other format, two per cent of the budget.~~

(e) Higher-Budget Productions

Where the budget of a mini-series or telemovie exceeds \$2.5 million per hour, the minimum percentage licence fee required by the FFC from the domestic free-to-air or pay TV network will be negotiated on a case-by-case basis. However, the required licence fee will be significantly higher than the floor price of \$400,000 per hour.

(fe) Animation

The terms and conditions for investing in animated programs will be the same as for live action television dramas (see above).

6. CHILDREN'S TELEVISION DRAMA

6.1 General

The FFC will invest in:

- mini-series of 13 half-hours or 26 half-hours;
- animated mini-series of up to 26 episodes, each not less than one-quarter commercial television hour;
- telemovies.

Before the FFC will invest in a subsequent mini-series or telemovie, the first mini-series or telemovie must have been launched at a major television market and secured acceptable international sales.

The FFC will not invest in more than 26 hours in total of any one children's drama series.

6.2 FFC Funding Criteria

The FFC welcomes an entrepreneurial approach by producers to financing and will consider a diversity of financing streams (as detailed in clause 2.2), including equity investment and distribution guarantees.

In order to maximise production levels and diversity of slate, the FFC encourages producers to secure as much non-FFC finance as possible. Where projects are being assessed on a competitive basis (ie. where demand from eligible projects exceeds available funds), the FFC will give preference to projects seeking a lower proportion of FFC investment.

In the case of equity investment, the FFC will generally not invest more than 50 per cent of the budget for any children's drama mini-series. For 26 half-hours it will generally not invest more than \$4.5 million, or for 13 half-hours more than \$2.25 million.

The level of FFC investment in a telemovie will be considered on a case-by-case basis.

As an alternative to equity investment, the FFC may consider putting up a distribution guarantee to a maximum of 60 per cent against the world, including Australia/New Zealand. Initially it will only consider allocating approximately \$5 million of its total children's television drama funds for 2003/04 to this type of funding.

6.3 FFC recoupment split with producers

To support producers in building viable businesses, the FFC will share the funds it recoups from each project with the producer, from first dollar. The share will be calculated on a sliding scale that remunerates producers for bringing non-FFC finance to the project.

The percentage share of recoupment from first dollar will be as follows:

- Where the FFC contributes more than 45 per cent of the budget: 20 per cent to the producer/80 per cent to the FFC,
- Where the FFC contributes less than 30 per cent of the budget: 50 per cent to the producer/50 per cent to the FFC;
- Where the FFC contributes 30-45 per cent of the budget, a sliding scale will apply. [The producer's share will increase by two per cent for every one per cent less required from the FFC.]

6.3.4 Marketplace Attachments

- For miniseries, the FFC will expect a presale from a broadcaster for free-to-air or pay television Australian rights of not less than \$85,000 per half-hour. Pay TV or exclusive satellite rights cannot be included as part of the domestic free-to-air television licence fee.
- The FFC will also require a presale in a major overseas territory for children's drama. The budget level will determine the level of other presales or guarantees required.
- The level of marketplace attachment required for a telemovie will be considered on a case-by-case basis.
- The FFC will require a sales agent for ROW to be attached on all projects.
- As the minimum domestic licence fee for children's drama represents a relatively low percentage of the production budget, the FFC expects the broadcaster to meet the cost of delivering the program in High Definition (HD) format.

6.5 Emerging Children's Producer Fund

The FFC's requirements for foreign pre-sales in the category of children's drama recognise the excellent reputation Australian producers have built up internationally as suppliers of quality children's programming. However, the FFC also recognises that this success may act as a barrier for emerging producers who have yet to establish themselves in the domain of higher-budget, internationally oriented children's drama.

Therefore, the FFC will trial a pilot scheme in 2004/05, whereby it will apply up to \$2.5 million of its children's drama funds to support the production of two lower budget mini-series (13 x half-hours each) made by emerging producers. The FFC will require a domestic free-to-air pre-sale for these series, but will not require any foreign advances.

The purpose of the fund is to give new producers the opportunity to make innovative projects with strong potential to appeal to Australian audiences.

The incentive for innovation and risk-taking in a creative sense will lie in producers not having to cater for the tastes and standards of several territories at the same time. Also, the scheme will make room for the production of some programs of intrinsic interest to Australian audiences, which may not necessarily have the potential to travel.

The following conditions will apply:

- Projects must have a domestic free-to-air television pre-sale of not less than \$85,000 per half hour;
- Producers must be mentored by an experienced children's drama producer, who will take an executive producer role for a modest fee approved by the FFC;
- Program budgets should be no higher than \$200,000 per half hour.

7. DOCUMENTARIES

7.1 General

The FFC invests in documentaries with an Australian free-to-air television presale. It does not invest in other actuality programs, such as reality television, infotainment, current affairs, cooking, 'how to' or sports programs.

The FFC finances documentaries in ~~two~~ three strands:

- accord documentaries (requiring a local television presale only)
- non-accord documentaries (requiring a local television presale, as well as international presales/guarantees)
- Filmmaker Innovation Fund

A total of \$750,000 will be applied from the FFC's documentary funds for 2004/05 for the pilot Filmmaker Innovation Fund. The remaining funds will be allocated 50/50 to the accord and non-accord documentary strands.

~~To ensure that the FFC slate includes a balance of accord and non-accord documentaries, the FFC's annual allocation to accords will be capped at 50 per cent of its total documentary funds.~~

Government-funded organisations with a specific brief to produce documentaries are not eligible applicants (eg. Film Australia). They may access FFC funds if they have entered a co-financing agreement with an existing independent production company.

Where a production company is wholly owned by a government-funded organisation, the wholly owned subsidiary will be treated under the guidelines as if it were the parent company/organisation.

7.2 Accord Documentaries

~~The FFC has reached accords with the ABC and SBS, which provide for minimum levels of cash presales to be paid by the broadcasters. The FFC and the broadcasters have agreed that accord films are to be culturally relevant to Australia.~~

~~Where a domestic broadcaster agrees to contribute 35 per cent of the total budget, and there is no other market attachment, the FFC will contribute 65 per cent. Funds will be allocated on a 'first-come, first-served' basis, and there will be no percentage allocation of accord funds to any particular broadcaster.~~

~~The films will comprise a diverse annual slate, including high and low budget one-hour films and up to three half-hour series per broadcaster.~~

Because accord films often deal with specifically Australian stories and issues, no international marketplace attachments are required to trigger FFC funding. However, producers will need to develop and present to the FFC, at rough cut, a marketing strategy for international sales.

~~Under the accords with the ABC and SBS, the broadcasters are required to put up a cash presale equal to 35 per cent of the total budget. While there are no formal accords with the commercial networks (Seven, Nine and Ten), the FFC will also finance accord programs with these broadcasters where they provide a licence fee equal to 35 per cent of the total budget.~~

~~In 2003/04, the FFC's allocation to ABC and SBS accords will be split in the following proportions: 50 per cent to the ABC and 50 per cent to SBS.~~

~~The FFC will cap its allocation to accords, across all networks, at 50 per cent of its total documentary funds for the year. The films will comprise a~~

~~diverse annual slate, including high and low budget one-hour films and up to three half-hour series per broadcaster.~~

The FFC may be prepared to consider, on a case-by-case basis, an additional investment to allow producers to approach international broadcasters with the aim of securing a rough cut sale.

7.3 Non Accord Documentaries

Non-accord projects require a local free-to-air television presale as well as marketplace attachments from overseas sources to attract FFC investment. They must demonstrate potential for recoupment on the FFC's investment.

7.3.1 FFC Funding

The FFC will generally contribute no more than 50 per cent of the budget for both one-off non-accord documentaries and series, with the majority of the non-FFC contribution to be in the form of marketplace attachments.

The FFC will expect the domestic licence fee to be no less than \$90,000 per hour. Where budgets exceed \$~~600~~500,000 per hour, the FFC will expect the domestic licence fee to be in excess of \$110,000 per hour.

Where the producer has low levels of marketplace support the FFC's recoupment prospects will be an important factor in determining whether the FFC will invest.

7.3.2 Marketplace Attachments

Both a domestic free-to-air television presale and other forms of marketplace attachments are required: either a presale in a major territory or a significant advance or guarantee that provides the FFC with the prospect of reasonable levels of recoupment.

7.4 FFC recoupment split with producers

To support producers in building viable businesses, the FFC will share the funds it recoups from each project with the producer, from first dollar. The share will be calculated on a sliding scale that remunerates producers for bringing non-FFC finance to the project.

The percentage share of recoupment from first dollar will be as follows:

- Where the FFC contributes more than 50 per cent of the budget: 20 per cent to the producer/80 per cent to the FFC,

- Where the FFC contributes 40-50 per cent of the budget: 30 per cent to the producer/70 per cent to the FFC;
- Where the FFC contributes less than 40 per cent of the budget, a sliding scale will apply. [The producer's share will increase by two per cent for every one per cent less required from the FFC.]

7.5 Filmmaker Innovation Fund

In 2004/05, the FFC will pilot a fund to encourage the production of innovative documentary projects that do not require market pre-sales.

The FFC will apply \$750,000 of its annual documentary funds for the production of five documentary programs with no requirement for market attachments. It will allocate \$150,000 to each of the five projects.

The aim of the scheme is to provide the opportunity for filmmakers to make more innovative and exciting programs by stepping outside the potential limitations of broadcaster commissioning and FFC market requirements.

As the fund is not intended to duplicate the role of the development agencies, preference will be given to experienced filmmakers.

Projects will be selected by the FFC (including specialist consultants) according to the following criteria:

- track record of creative team
- creative team's vision for the project
- distinctiveness of project
- quality of project
- outcomes proposed by filmmaker
- potential to achieve proposed outcomes

Successful applicants may use the funds to make a television documentary, or pilot material for a feature film or documentary series. However, projects must have a provisional 10BA certificate to apply, which requires the delivery of a documentary program of at least a half-hour in length.

The FFC will reward the entrepreneurial efforts of the filmmakers selected through this fund by splitting all revenues 50/50 between the FFC and the production company from first dollar for the world.

7.64 Feature Length Documentaries for Cinema Release

The FFC will consider financing documentaries designed for theatrical release on a case-by-case basis. ~~The criteria for investment will reflect those for feature films (see Section 3).~~

7.75 Enhancement

Where a documentary producer indicates that there is a possibility for an enhancement (eg. feature-length version for television or extension into series), the FFC requires that an increase to the domestic licence fee be negotiated with the broadcaster and approved by the FFC prior to the FFC increasing its investment.

7.86 Marketing Allowances

~~From 2004/05, marketing allowances will not be treated as a separate item and should be incorporated into the production budget. The FFC will contribute a marketing allowance in the budgets of all documentaries (other than large format documentaries). The allowance is intended to compensate producers for their efforts in securing presales, for ongoing marketing duties and, if necessary, to cover bank fees incurred by the returns account.~~

- ~~• For accord documentaries, the FFC will contribute \$5,000. This amount will not be taken into account when assessing the Australian broadcaster's percentage contribution.~~
- ~~• For non-accords, the marketing allowance is \$7,500.~~

~~Production companies which form part of a vertically integrated entity with a sales arm are not entitled to the marketing allowance.~~

7.9 DVD/New Media Budgets

~~There is a small but growing trend for the subsequent exploitation of documentary projects via new and emerging forms of distribution and release – in particular, DVD and the internet.~~

~~As the FFC can only finance projects with a provisional 10BA certificate, it cannot invest directly in new forms of media. However, if a website or DVD component is incorporated into a documentary production from the outset, the FFC can invest in these additional components.~~

~~Therefore, the FFC encourages producers, where relevant, to incorporate DVD and new media costs as part of the total production budget.~~

7.108 Australian Teachers of Media (ATOM)

The FFC requires the producer to supply ATOM with three VHS tapes of the finished film for the possible production by ATOM of a study guide booklet. The cost of the study guide will be covered by a budget variation funded by the FFC.

Study guides must be completed before the first Australian broadcast. The FFC will not pay for study guides where the program has already been broadcast.

7.119 More Information

Copies of the following handout documents are available from the FFC's Sydney and Melbourne offices:

- FFC Budgeting Requirements for Documentary
- FFC Documentary Check List
- Documentary Contact List (lists international and Australian sales agents and distributors)

8. CO-PRODUCTIONS

8.1 General

The FFC will exercise its discretion in the financing of co-productions and will have regard to:

- the overall level of Australian content;
- the participation of Australians in key creative roles, especially cast, writer and director;
- whether the project has been originated in Australia;
- where it is to be shot;
- the number of co-productions financed in a particular year's slate.

The FFC will only fund the cost of the Australian elements of a co-production.

8.2 Feature Films

In the case of feature films, the FFC's criteria for investment in official co-productions are the same as for Australian features (see Section 3. Feature Films). In addition, the co-production partners must secure distribution in their own territory.

8.3 Television Drama/Documentary

In the case of television drama and documentary, the FFC's criteria for investment in official co-productions are the same as for Australian television drama (see Section 5. Adult Television Drama) and Australian documentaries (see Section 7. Documentary). In addition, the co-

production partners must secure a presale or distribution in their own territory.

9. APPLYING FOR FUNDING

9.1 The Funding Process

[For feature film projects applying for Project Evaluation, see Section 3.2; for documentary projects applying for the Filmmaker Innovation Fund, see Section 7.5.]

Producers are invited to discuss their projects with FFC Investment Managers as the first step in their financing strategy. Producers can then obtain direct advice on how best to structure the project to secure FFC support. Investment managers are available to assist in negotiations.

Application forms need to be lodged before a project is formally accepted as applying for funding. Producers should discuss their projects with the FFC before lodging an application form.

The investment manager will guide the project through the assessment process and advise the producer when the project is ready to be considered by the board. The board makes all investment decisions, generally following investment managers' recommendations.

The producer will be advised in writing of the investment manager's recommendation to the board and any conditions the FFC may attach to its investment together with the details of the deal. In the event of a negative recommendation, the producer will be provided with reasons for that recommendation.

A project will generally proceed to the board six weeks following application. This may take longer if the elements in the project are complex, or if there are difficulties in securing the commitments from the co-financiers and marketplace attachments. The board may also put a hold on approvals in a particular category from time to time if there is a high level of demand on funds and projects need to be assessed competitively. Producers will be advised if this is the case.

The board comprises nine directors. It meets every six weeks on dates published in the trade press and in the FFC's newsletter and website. In addition, the board will hold urgent meetings where required.

Following the board's decision to invest in a project, the producer receives a letter of approval setting out the full terms and conditions of investment and the documentation required by the FFC.

The production and investment agreement and other key agreements can generally be concluded within six weeks of the issue of the letter of approval. However, this time-frame is subject to the producer supplying the necessary documents and is dependent upon the producer's ability to co-ordinate the other elements of the deal.

The FFC's cashflow cannot commence until these documents are executed.

The contracting process for most documentary and drama projects is undertaken in-house by the FFC. For some projects, the FFC utilises a pool of solicitors under the supervision of the business affairs manager.

9.2 Eligibility to Apply

Australian producers and Australian owned, controlled and registered production companies are entitled to apply for FFC funding. The intention of this guideline is to ensure that Australians are, and remain, in control of the projects that receive FFC investment.

To be eligible, production companies must at least:

- be incorporated in Australia;
- have Australian-based central management and control;
- have day to day management and control in the hands of Australians;
- have at least 50 per cent Australian legal and economic ownership and board membership, with any casting vote to be exercised by the Australian 50 per cent ownership;
- have majority Australian legal and economic ownership and Australian board membership;
- control the development process [the FFC will not finance projects developed by a foreign company and subcontracted to an Australian producer at a later stage].

Individual producers must be Australian citizens or residents as defined in the Tax Act.

Broadcasters, pay television channel providers and companies with significant foreign-owned international distribution infrastructure, and their related companies, are not entitled to apply for FFC funding.

The decision to invest in a film where some funds have been raised under a prospectus will need to satisfy the normal FFC requirements set out in these guidelines.

10. TERMS OF TRADE

Producers must fill in an application form before their projects are formally accepted as applications for funding. Application forms are available from the FFC. (See point 10.19 on application fees.)

A production company in default of any contractual obligations to the FFC may not submit new projects to the FFC pending remedy of the default. This includes the failure to provide a satisfactory audit or a final certificate. This applies to the principals of the production company and related companies.

10.1 Script Development Buy-Out & Interest

State and federal agencies and private sector participants that develop projects to be financed by the FFC will be entitled to either principal and reasonable interest or an agreed percentage to be paid from the budget of FFC supported projects.

Producers may claim interest on development costs, subject to verification.

10.2 Key Creatives - Television

The FFC expects key creatives (producer, writer, director, director of photography, editor) to be sourced from the freelance market and not from the staff of the broadcaster offering the presale.

In addition, the FFC will not finance drama where the project has been developed by a broadcaster and sub-contracted at a later stage to a producer.

10.3 Production Investment Agreement

The FFC uses standard form production and investment agreements (PIA) for documentaries, drama and co-productions. These documents are negotiable and adjusted to the specific requirements of each project. Copies of the model agreements are available from the FFC.

The PIAs regulate the FFC's and the producer's rights and obligations. The FFC will not cashflow a project until the PIA has been executed and all other financial commitments and market attachments are in place.

Producers should become familiar with PIA and supply supporting documentation quickly to facilitate contracting and cashflow.

10.4 Chain of Title

Producers must establish clear rights to all works required for the making and exploitation of the project. It is recommended that projects which have had protracted and complex development or are official co-productions seek professional advice early to clear the chain of title.

The FFC will require chain of title documentation before the project is considered for investment.

10.5 Sequel, Remake, Series, Spin-Off and Merchandising Rights

The FFC prefers producers to acquire sequel, remake, series and spin-off rights and ancillary rights for FFC funded projects, and expects to participate in revenues from the exploitation of those rights.

The FFC accepts that in some circumstances additional compensation may be paid for the exploitation of subsidiary and ancillary rights at the time those rights are exploited. In addition, the FFC will expect to participate in revenues from exploitation of subsidiary and ancillary rights, including merchandising rights, in supported projects.

In respect of its sequel, remake, series or spin-off rights, the ~~FFC will negotiate a rights fee for the new work.~~ terms on which the FFC will participate are as follows:

- For a television series of 10 or more episodes, the fee is \$5,000 per episode for the first series and \$7,500 per episode for subsequent series.
- For a sequel, remake or spin-off of a feature film, television drama, children's television drama or documentary, the fee is two per cent of the total production budget.
- These fees must form part of the budgeted cost of any sequel, remake, series or spin-off, and shall be payable to the FFC and any other equity investor, excluding the producer, upon commencement of principal photography.

The sequel, remake, series or spin-off fee shall be payable to the equity investors, excluding the producer, for their own use and benefit.

The FFC will not invest in a television project unless the producer has the right to exploit sequels. The domestic broadcaster must give the producer a reasonable opportunity to exploit with third parties sequels or series in the event the broadcaster does not proceed with any sequel.

10.6 Copyright Ownership and Profit

10.6.1 Copyright

For equity investments, the FFC will require a share of copyright commensurate with its investment. The FFC will remain an owner of copyright for the duration of copyright and will be entitled to revenues in perpetuity.

~~Where the FFC provides a distribution guarantee, it will generally require a nominal share of copyright, but the share will revert to the producer upon recoupment of the distribution guarantee.~~

The FFC will not require a share of copyright for P&A loans.

10.6.2 Profit

For equity investments, profit participation is a matter for negotiation between the producer and the FFC but is usually 50 per cent to the investors and 50 per cent to the producer. Third party creative participations in profit shall be met from the producer's share.

Where the FFC provides a distribution guarantee, it will not expect to participate in profits.

10.7 Credits

- Where the FFC provides an equity investment or distribution guarantee and is the major participant, the FFC will receive a full-frame, single card presentation credit in first position in the head credits.
- Where the FFC is not a major participant, the FFC will receive a presentation head credit, which may be shared with other eligible participants.
- Investors / distributors whose individual contribution equals at least \$1 million or 30 per cent of the budget may receive a presentation head credit.
- Investors who contribute more than \$250,000 or 10 per cent of the budget, but less than \$1 million may receive an "In Association With" credit in the head credits.
- The FFC has a set of guidelines available on its requirements regarding use of the FFC logo.

10.8 Producers' Overheads

The FFC will require overhead funding in budgets to be calculated as follows:

- *Feature Films and Television Drama*

- Three per cent of the below-the-line budget for features and television drama with budgets over \$6 million, capped at \$200,000;
- Four per cent of the below-the-line budget for features and television drama for budgets of \$4-6 million, capped at \$200,000;
- Five per cent of the below-the-line budget for features and television drama for budgets under \$4 million.

~~Three per cent of the below-the-line budget, capped at \$200,000 for features and television drama.~~

- *Documentaries*

Accords: a flat fee of up to \$10,000;

Non Accords: \$15,000 per hour, capped at \$45,000.

10.9 Producers' Service Fees

Producers of feature films ~~and television drama programs~~ will receive a service fee in acknowledgment of their ongoing reporting responsibilities to the FFC and other investors following delivery of their projects (not applicable to vertically integrated companies). Producers are only eligible for this service fee for programs contracted on or after 30 June 2000.

The service fees will be paid in two tranches, upon receipt of satisfactory market reports 12 months and 24 months after delivery.

Feature films:	up to \$40,000
Television dramas:	up to \$20,000

The following conditions will apply to payment of producers' service fees:

1. The service fee for a project will only be paid from the monies recouped from the project, other than guaranteed recoupment.
2. Where a collection agent is employed, the producer must be able to demonstrate a high level of servicing of the project to receive a fee.
3. In the case of co-productions, the service fee is to be pro-rated, as with PRE, at 50 per cent. The service fee applies only to Australian producers.

4. Where the FFC is not a major participant in the project, no producers' service fee is payable.

10.10 Producers' Commissions

Upon expiry of the sales agent's/distributor's initial licence terms, the FFC will allow producers with the appropriate expertise to take over exploitation of the rights at the same level of commission as the previous licensee.

10.11 Producers' Revenue Entitlements – feature film

- Where the FFC is an equity investor in a feature film, it will offer Australian producers a share of its revenues once the FFC has recouped ~~a certain percentage~~ 30 per cent of its investment. The revenue entitlement shall be 15 per cent.

~~• Television drama (adult mini-series, children's mini-series and telemovies): the threshold will be 35 per cent and the revenue entitlement shall be 15 per cent;~~

~~• Documentaries: the threshold will be 10 per cent and the revenue entitlement shall be 20 per cent;~~

The producer's revenue entitlement (PRE) will be treated as an advance against the producer's profit share.

Where the FFC is asked to increase its investment after approval, and agrees to do so, the increased investment shall, subject to exceptional cases, be recouped in first position from the PRE.

The FFC may not agree to these revenue entitlements where a distribution guarantee is to be paid by the production company or a related company or a third party company in a joint venture arrangement.

Where the FFC puts up a distribution guarantee, or some other form of non-equity investment, the PRE benefit will not apply.

10.12 Completion Guarantee, Insurance

The FFC requires a completion guarantee on each project on terms acceptable to the FFC.

If the producer negotiates a rebate, the rebate will be applied to any production overage if the project exceeds its budget. Where there is no overage, the producer is entitled to the rebate.

In addition, the FFC expects producers to effect usual insurances, although in the case of accord documentaries, Errors and Omissions insurance will not generally be required.

10.13 Letters of Credit & Financing

The FFC will generally require foreign sales companies or distributors to pay an advance no later than delivery.

Such payments must be secured by a Letter of Credit (LC) or similar bank guarantee unless the sales company has demonstrated its capacity to pay. The costs associated with the Letter of Credit may form part of the production budget.

Where sales agents are providing an LC or another form of bank collateral, the FFC will need to satisfy itself of these arrangements prior to the project being presented to the Board.

The FFC may accept a sales agent securing bank finance through estimates, on the condition that there is an acceptable level of collateral arrangements involving a combination of gap and presale finance. The FFC will also look at the costs involved, recoupment, rights and security sought and the level of risk being taken by the sales agent.

The FFC will not accept insurance arrangements where sales agents' projections are directly insured.

Producers must provide details of intended cashflowing arrangements prior to presentation to the Board.

10.14 Sales Agents and Distributors

The FFC reserves the right to approve or decline the appointment of a sales agent.

10.15 Collection Agents

The FFC encourages the use of collection agents to collect and disburse all revenues from a project. It reserves the right to insist upon a collection agent when dealing with sales agents or distributors.

The costs of the collection agent shall be deducted off the top prior to disbursement of revenues.

10.16 Distribution Agreements

The FFC will have approval over distribution agreements in major territories.

10.17 GST

The FFC requires production companies to have an Australian Business Number (ABN) and register for GST.

The FFC will require production companies to issue a Tax Invoice as a pre-condition to drawdown of FFC investment.

10.18 Audit and Distribution Delivery Items

A full audit is required at project completion.

The FFC will hold back \$20,000 of its investment for all feature films and television drama from final drawdown, payable when all conditions of investment, distribution delivery items and final audit have been met.

In the case of documentaries, the FFC will retain \$6,000 of its last drawdown for accords and \$10,000 for non-accords, payable when all conditions of investment, distribution delivery items and final audit have been met.

10.19 FFC Delivery Items

(a) The following FFC delivery items must be included in each approved budget:

- 3 x VHS copies for feature films;
- 2 x VHS copies for television drama and documentaries (where applicable, more than one episode per tape is preferred);
- 3 x DVD copies [where a glass master is struck];
- 1 x Digital Betacam copy of the film
- 1 x press kit
- 3 x photographic stills (B&W or colour) size 20cm x 25 cm (8"x10") preferred OR 3 x digital stills (B&W or colour) minimum size 350 pixel wide x 300 pixel.
- Soundtrack on CD (where available)

The appropriate ScreenSound items listed below must be included in the budget:

- For projects finished on videotape - Digital Betacam videotape.
- For projects finished on 16mm -
either a Digital Betacam videotape,
OR a 16mm release print sent direct from the laboratory to ScreenSound as preservation print.

- For projects finished on 35mm - a fresh 35mm release print sent direct from the laboratory to ScreenSound as a preservation print.

For documentaries, delivery to Australian Teachers of Media (ATOM) -

- 3 x VHS videotapes to be delivered to ATOM.

(b) For documentaries the following sales company delivery items must be included in the budget:

- Digital betacam master (16:9 aspect ratio)
- 3 x VHS tapes (one with timecode)
- 8 x colour transparencies of a professional standard
- a full post production script

10.20 Fees

The fees listed below apply from 1 July 2004:

(a) Application Fees

The following fees currently apply to each application and should accompany the application:

	Fee (ex gst)	Fee (inc gst)
Budgets up to \$0.5 million	\$49.09	\$54.00
Budgets over \$0.5 million up to \$2 million	\$120.00	\$132.00
Budgets over \$2 million	\$300.00	\$330.00

(b) Administration and Legal Fees

An administration and legal fee will be charged for the FFC's financial participation and will be deducted from the first drawdown of FFC funds.

The fee is to be included in the budget as follows:

	Fee (ex gst)	Fee (incl gst)
Budgets up to \$0.5 million, or part thereof	\$2,909.09	\$3,200.00
Budgets over \$0.5 million and up to \$1 million, or part thereof	\$7,272.73	\$8,000.00

Budgets over \$1 million and up to \$2 million, or part thereof	\$22,727.27	\$25,000.00
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Budget over \$2 million, a base fee of \$22,727.27, and for every additional \$1 million or part thereof	plus \$13,636.36	\$15,000.00
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Special arrangements as agreed between the parties will apply where the FFC puts up a distribution guarantee, P&A loan or a discounting facility.

11. FFC CONTACT DETAILS

The FFC has offices in both Sydney and Melbourne. Producers are invited to contact the offices for further information and advice.

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The FFC's website provides up to date news and information regarding the FFC. Stakeholders are encouraged to join the FFC's e-mail list to receive the FFC's Online Newsletter. Other news and information available to visitors of the FFC web site includes Investment Guidelines, Funding Approvals, Media Releases, FFC Board Meetings, Corporate Profile, Project Sales and the latest Annual Report.

FFC staff also participate in industry seminars, conferences and workshops on request.

Film Finance Corporation Australia Limited
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