

BACKGROUND TO PROPOSED CHANGES IN THE FFC'S DRAFT INVESTMENT GUIDELINES 2004/5

This document presents a summary of the rationale for the main changes the FFC is proposing to the industry in its Draft Investment Guidelines 2004/05.

1.2 Non-FFC Finance

The target of 45 per cent non-FFC finance has been replaced by the following:

“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.”

This recognises the high level of demand for the FFC's limited funds and the need, in some cases, to make competitive assessments of projects. Where the FFC must make a competitive assessment between eligible projects competing under the market attachment model, this will be a primary consideration.

The clause also recognises the 'trade-off' that exists between the level of FFC recoupment and the amount of non-FFC finance attached to projects financed. The FFC's objective is to maximise production levels and diversity of slate, at the same time as supporting viable businesses. In light of this the FFC is amending its policy regarding recoupment (see sections on Television Drama and Documentary) to give a greater share of returns to producers, in order to help them create more sustainable businesses.

At the same time, however, the FFC needs to gear up its limited funding as much as possible – without compromising its other objectives – in order to generate production. Therefore, the FFC will give preference to those producers who bring higher levels of non-FFC finance to the table.

Section 2.4 Allocation of FFC Funds Through the Year

In 2003/04, the FFC experienced heavy demand in all program categories and committed the majority of its funds to projects early in the financial year. The background context to this was the overall decline in production levels that had occurred in the industry early in 2003/04, and the need to get new projects into production as quickly as possible.

However, in the future the FFC wishes to ensure that it has funds to commit through the majority of the financial year. It is therefore proposing that where it becomes clear that 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 will announce to the industry that it will be allocating its funds for that program category in two half-year tranches.

Section 3: Feature Films

The FFC is proposing substantial changes to the way it finances feature films in 2004/05. The background context for the discussion is:

- A growing, and now acute, sense within the FFC, the industry and beyond that the current model of FFC financing – based almost entirely on market attachments – is no longer working effectively;
- 2003 having been a very poor year for box office performance of Australian films, triggering a wave of negative media and industry dialogue about the poor quality of Australian films;
- The FFC's bid for additional funding for features including a commitment to Government to try to increase the quality and audience appeal of films financed.

The FFC's traditional market attachment model is based on the premise that market participants with a strong vested interest in the performance of a project are best placed to trigger FFC funding. In the case of feature films, significant shifts in the operating environment have undercut the effectiveness of this model. In summary, this is because feature film financing now relies much more on 'soft money' – in particular, Australian and overseas-based tax funds, money invested to meet local content requirements, and state agency investment. Distributors and sales agents – what might be called 'genuine' marketplace – now frequently contribute only small amounts to the total production budget, so that they are not really at risk to any significant degree.

The overall result is that the 'greenlighting' of Australian feature films is occurring in a diffuse fashion, with nobody taking ultimate responsibility for the choices made. It can be argued that as the major financier of feature films in Australia, the FFC is the only body in a position to address this situation by being more accountable for the quality of the projects it finances.

It should be considered here that Australia is probably the only country in the world where the main film production agency has not given substantial weight to the creative merit of projects in its decision-making process.

Since last October the FFC has undertaken extensive informal consultations with key industry organisations and individuals in regard to the feature film strand. There appears to be widespread support for the FFC to recruit the skills necessary to evaluate the creative merit of the projects applying for finance.

Given that the FFC is the main avenue for financing Australian features, we believe it is in the best interests of diversity to trial a two-door approach to feature film financing. The proposed two-door policy is set out in Section Three of the Draft Guidelines.

In the case of Project Evaluation (see clause 3.2), the FFC proposes to recruit two specialist staff who will have a diverse background and who, ideally, will bring complementary perspectives/tastes to the evaluation process. These staff will be qualified to evaluate the potential of the whole project, including its creative merit: this means evaluating the creative team, the script, the creative team's vision for the project, and the budget of the project in relation to its audience and recoupment potential (the full criteria are set out in clause 3.2). These two people will be on contract to the FFC for a limited period of time. The duration of the contracts may differ initially to ensure a level of continuity of staff – for example, it may be that in the first instance one person is contracted for 18 months and the second for 12 months, and that subsequent contracts would be for 12 months. This would ensure a turnover of one, rather than two, people at any one time. The FFC will be seeking feedback from the industry on the preferred duration of the contracts and whether there should be an option for renewal.

**FFC recoupment split with producers:
Sections 5,6,7 - Television Drama, Documentary**

Sections 5, 6 and 7 outline new recoupment splits for television drama and documentary. Under the proposed changes the FFC will split its recoupment from projects with producers from first dollar.

The FFC is keen to find ways of supporting producers in building more viable businesses and hence a more viable industry. Providing greater incentive and remuneration to producers for the exploitation of their projects is one of the ways we are proposing to do this.

Once again, in order to maximise production, there will be a trade-off between the share of recoupment for producers and the level of non-FFC finance they bring to their projects. Producers asking for a lower percentage contribution by the FFC will receive a larger recoupment corridor.

The proposed recoupment split from first dollar would replace the FFC's PRE entitlements and Producers Service Fee from 1 July 2004 (except in the case of feature films).

Feature films: The FFC is not proposing to extend this recoupment split to feature films in 2004/05, and will retain the current PRE and Producers Service Fee provisions for feature film projects. The reason for separating out features in this way is that a recoupment split from first dollar to feature producers may jeopardise the FFC's plan to use its funding to underpin the raising of a private sector fund to finance feature production. We believe that such a fund would greatly assist producers by significantly gearing up the volume of production that could be triggered by the FFC. However, as the recoupment split to investors will be critical in determining whether the fund is realised, it would be difficult, at this point, to guarantee producers a recoupment split from first dollar.

6.5 Children's Drama – Emerging Children's Producer Fund

The rationale behind the Emerging Children's Producer Fund is set out in the guidelines as follows:

“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.”

This is a new proposal and the FFC will be seeking feedback from the industry during the guidelines review.

7.2 Accord Documentaries

Last year SBS and the film community pushed heavily for the FFC to give parity in apportioning the accord funds between the ABC and SBS – from a 60:40 split to 50:50.

The FFC is now seeking feedback from the industry on whether to remove the network quota system entirely in 2004/05 and fund the accords on a 'first-come, first-served' basis. The intention behind this proposal is to empower the producer to a greater extent and generate positive creative friction as the broadcasters scout to secure the best independent projects.

7.5 Filmmaker Innovation Fund

Under the FFC's existing financing strands (the accords and non-accords), producers must have a broadcaster pre-sale to trigger FFC funding. This is a sound policy for a majority of the FFC's commitments – and one that engenders a concept of audience in the minds of filmmakers – but there is room to create a small, separate strand through which we can trial what happens when there is no requirement for a broadcaster pre-sale.

The aim of this scheme is to create fertile ground for filmmakers to do something edgy, innovative, distinctive or risky in an environment where familiarity with funding strands may be encouraging safe, rather than adventurous, program-making.

The wider context for this discussion is that we are currently experiencing a very interesting and inspiring period worldwide for documentary. We are seeing unprecedented interest in theatrically released documentaries (eg. *Bowling for Columbine*, *Spellbound*, *Travelling Birds*, *Capturing the Friedmans*); the predominance of high-concept documentary series that sell around the world into prime-time slots (eg. *Walking with Dinosaurs*, *Pyramids*, *Jazz*); and the blurring of definitions of documentary to produce innovative, high-quality programs that draw on elements of other genres and attract new audience interest in the process (*Edwardian Country House*, *The Day Britain Stopped*, *Drinking for England*).

Australia has a long tradition of excellence in the documentary form and we want to find ways of putting the spotlight back on Australia. The FFC is proposing to pilot this fund to give filmmakers greater freedom to come up with innovative, creative ideas.

This is not to suggest that Australian broadcasters aren't looking for innovative material, it is simply recognising that the constraints under which they operate – scheduling issues, drive for ratings and other imperatives – may not always support the selection of the most creative projects. Furthermore, they are primarily thinking about one audience only (television) rather than theatrical, DVD, educational and other types of exploitation.

Entrenched financing formulas of licence fees, guarantees and equity can end up enforcing their own limitations on the diversity of films made. The idea for this fund is to create the opportunity for documentarists to think in different ways about financing a project.

Under the new fund, the FFC will select up to five concepts and allocate \$150,000 to each filmmaking team to make a 10BA certifiable program. Applicants may want to make an hour-length documentary; they may want to make the first instalment of an expensive series concept to sell in the US or UK; they may start what will become a feature-length documentary. We may also

choose an outstanding project at rough cut stage (this is the highly successful HBO approach).

The other driver behind this fund is its aim to reward the entrepreneurial efforts of the producer by splitting all sales 50/50 between the FFC and the production company from first dollar for the world. The FFC will not preclude producers from bringing other pots of money into the project as it progresses through production, to augment the budget due to the organic growth of the idea. However, the clearly stated intention of this fund is to provide an alternative to the broadcaster pre-sale model of financing.

Successful applicants will be chosen by the FFC with the assistance of a specialist consultant, who will be a highly qualified person with a diverse background.

Defining Documentary

The FFC recognises that there is increased uncertainty in the industry about how to define the documentary form. This is not distinct to Australia, it is a worldwide concern stemming from changing programming trends, including the rise of reality television worldwide. The concern in Australia is that the FFC ensures that it allocates scarce government resources to projects of quality and serious intent, rather than forms like light entertainment and reality/game television, which can be made without government assistance.

The FFC has had initial discussions with the key industry associations about this issue and flagged that it will be seeking feedback from filmmakers in the Investment Guidelines review.

The Australian Broadcasting Authority, in consultation with the industry, is currently preparing a new set of guidelines to expand on how its current definition might be applied. This will hopefully clarify what is meant by 'reality television' and other terms used in different ways by different parts of the industry. The FFC and other industry bodies will be meeting with the ABA regarding this issue in the coming weeks.

10.5 Sequels and spin-offs

A recent internal review of the administration of sequel and series fees has shown the existing system to be inefficient. Often series and sequel fees have not been paid because producers did not include them as part of the development cost of any such series, sequels or spin-offs. The proposed changes to the guidelines will both modify and clarify the existing guidelines.

The series and sequel fee was previously referred to only in terms of television drama. There is no logical basis for this separation and the guidelines will now refer to features, telemovies, children's drama, documentary and/or animation.

Other changes include:

- Defining a series to mean a "series of ten or more episodes";
- Specifying that payment of the sequel or series fee is to be made from the budget of the sequel, series or spin off;
- Specifying that the payment is due upon commencement of principal photography;
- Specifying that this revenue entitlement shall not constitute gross receipts and that it shall be disbursed, pro rata pari passu, between the FFC and the equity investors, excluding the Producer.

Film Finance Corporation
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