Film Financing

This information sheet looks at Australian and international sources of funding for film, television and games developers including both funding by way of grants or an investment in the project.

Australian filmmakers can access funding from Federal, State and Territory funding bodies. Free-to air broadcasters and pay television channels may provide partial funding for film and television programming. Film distributors may assist in the financing of feature films and distributors and publishers of computer games are possible sources of financing for computer games. While a number public/government funding options exist, including the Producer Offset scheme, many filmmakers elect to seek funding through private avenues such as crowd funding. Each of these funding options is explored in more detail below

Screen Australia

Screen Australia is funded by the Federal Government and provides development and production funding for film, television and digital media projects.

Screen Australia's Terms of Trade including the general eligibility for Screen Australia funding, limits on funding and copyright interests in projects funded by it are published on the Screen Australia website. Each funding program operated by Screen has guidelines that describe the specific eligibility for the program and the deadlines for filing of applications.

The legal department of Screen Australia is responsible for the contracting with producers who receive development and production funding including the preparation of the production and investment agreement (PIA).

Some funding programs are designed to assist new filmmakers while other programs are designed for experienced filmmakers. Screen Australia's 'A-Z Budget' sets out the standard budgeting format for feature films, short films, documentaries, animation and digital media that is required by Screen Australia and usually required by State and Territory funding bodies.

Aboriginal and Torres Strait Islander filmmakers can apply to any Screen Australia program as well as the funding programs of the Screen Australia's Indigenous Department.

Screen Australia is also responsible for the administration of:

- The official co-production program, which facilitates film and television producing between Australia producers and producers in countries with which Australia has implemented co-production treaties; and
- The Producer Offset funding mechanism that is paid through the Australian company tax system, and is discussed below.

State and Territory funding bodies

State and Territory funding bodies also provide funding programs for filmmakers at various stages of the development of film making experience. Each of these funding bodies determines its own priorities for support and funding for feature films, short films, television drama and documentaries, animation and digital media. Each funding program operated by State and Territory funding bodies has specific guidelines that describe the specific eligibility for the program and the deadlines for filing of applications.

For more information on the specific requirements of each finding program provided see the websites for the relevant organization:

- Screen NSW

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- Film Victoria
- Screen Tasmania
- South Australian Film Corporation
- Screen West (WA)
- Screen Territory (NT)
- Screen Queensland

What is the ‘Producer Offset’ or ‘Producer Rebate’?

The ‘Producer Offset’ under Division 376 of the Income Tax Assessment Act 1997 (ITAA) and the Producer Offset Rules 2007 provide incentives for film production in Australia through the Australian tax legislation.1 The operation of the Producer Offset (which is sometimes referred as the Producer Rebate) results in a producer receiving a payment from the Australian Taxation Office (ATO) of 40% of the budget of a qualifying feature film and 20% of the budget for qualifying television productions. The Producer Offset is a different funding mechanism to the grant and funding programs provided by Screen Australia or State and Territory film funding bodies, which are discussed above. The eligible productions for the Produce Offset are:

- a feature film that will be exhibited to the public in cinemas (at least 60 minutes in length, or 45 minutes for 3D films);
- a single-episode program (e.g. 30 minute documentary for television, telemovie or direct-to DVD (of at least 60 minutes);
- a television series (documentary or drama) or mini-series (of at least 2 episodes, with a minimum episode length of 30 minutes); or
- short-form animation (of not less than 15 minutes in total duration).

The Producer Offset has further very specific eligibility requirements published on the Screen Australia website concerning:

- the eligibility of producers;
- the production meeting a ‘significant Australian content’ test;
- the production meeting ‘qualifying Australian production expenditure’ (QAPE) requirements.

A basic understanding of both the official co-production program and Producer Offset funding is contained in the Screen Australia publication ‘Doing Business with Australia’. Further information about the producer offset is also available on the ATO website.

Digital media projects (including console games, mobile and online games) are not eligible for Producer Offset financing.

Australian free-to-air broadcasters and pay-television channels

There are mandatory government standards for the broadcast of Australian content on commercial free-to-air television, and in respect of expenditure by Australian pay-television drama channels on Australian or New Zealand drama programming. This is an incentive for Australian free-to-air broadcasters and pay-television channels to provide financing for Australian film and television production, usually in the form of a licence fee for transmission rights.

The Australian Broadcasting Commission (ABC), Special Broadcasting Service (SBS) and National Indigenous Television (NITV) may provide specific funding programs for emerging filmmakers as well as funding productions of experienced filmmakers.

The editorial policies of television broadcasters, in particular public service broadcasters such as the Australian Broadcasting Corporation (ABC), may provide guidance or rules as to the use of product placement, crowdfunding or money provided by

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philanthropic funding bodies, such as Creative Partnerships Australia (CPA) or the Documentary Australia Foundation (DAF). The ABC advice producers to discuss funding arrangements with ABC Editorial Managers or ABC Executive Producers, where the ABC is involved in the funding of a film, such as where the ABC will be the Australian broadcaster of the film. The ABC editorial policies include:

- Editorial Policies Advice Note: Crowd Sourced Funding
- Editorial Policies Advice Note: Philanthropic Funding Bodies
- Free and Discounted Products, Services or Facilities
- Managing External Funding in Broadcast Television

SBS also publishes SBS Producer Compliance Guidelines for factual material and SBS Codes of Practice and Editorial Guidelines relevant to commissioned content.

Film distribution companies

Australian film distribution companies are also possible sources of production finance for feature films.

However, convincing commercial free-to-air broadcasters, pay-television channels and film distribution companies to invest in film or television production is never easy. It requires the right project, the right production team (with the necessary level of professional experience in key positions), and a persuasive pitch so that the people that commission productions are convinced that the use of their funds will result in film or television production that has the commercial qualities that they want.

International sources of film funding

'Official' co-productions and other co-productions

An 'official' co-production is a film financing and production arrangement that is organized under coproduction treaty or Memorandum of Association (MOU) that the Australian government has signed with another country. As at 1 February 2013, Australia has co-production treaties with Canada, China, Germany, Ireland, Israel, Italy, South Africa, Singapore and the United Kingdom and signed MOUs with France and New Zealand. Screen Australia manages the 'official' co-production program, although the negotiation of the treaties and MOUs is the responsibility of the Department of the Prime Minister and Cabinet – Office for the Arts.

Screen Australia publishes 'International Co-production Program Guidelines' which explain the process of applying for recognition as an official' co-production. The eligible films and other requirements can differ between each co-production treaty or MOU. For example, some coproduction arrangements are specifically limited to feature films, while television drama series, documentary films and series, animation and other formats may qualify for others.

The advantage of producing a qualifying film as an 'official' co-production is that the production will meet the 'significant Australian content' (SAC) test for accessing the Producer Offset; qualify as 'Australian content' for the purposes of broadcaster 'Australian Content' quotas; and be eligible for production investment from Screen Australia as well as state and territory film funding bodies.

Film financing in the international market

It is also open to Australian filmmakers to enter international film financing and production arrangements for feature films, short films, television drama and documentaries, animation and digital media that are not organized under an official co-production treaty or MOU.

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There are funding opportunities at international co-production and film funding markets and there are film funding events run in conjunction with some international film festivals. Screen Australian publishes information about film markets and International Pitching Forums.

Emerging filmmakers may find funding opportunities outside Australia from public service broadcasters that are looking for programming made by emerging filmmakers. There are also some Foundations that make grant funds available where the films meet the funding criteria of the organization. See, for example, the following websites:

- International Documentary Association
- World Cinema Fund
- The Bertha Britdoc Documentary Journalism Fund
- The Ford Foundation's JustFilms

Attracting Private Funding and Investment

Filmmakers can offer investment opportunities to private investors in the production of their film. The making of offers or invitations to investors to provide money including (however worded) an offer to invest in a film are likely to be considered as 'investment schemes' under the Corporations Act 2001 (Cth). The Corporations Act requires ASIC to regulate all investment schemes, whatever legal status of the entity making the offer, so that a film investment scheme may be regulated whether offered by a sole trader or a partnership or a company.

The Corporations Act defines an 'investment contact' as any contract, scheme or arrangement that involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in, or right in respect of, property.4 A film investment scheme may take the form of an offer to the investor of a return on investment comprising an interest in the film's copyright and/or a share in the proceeds of marketing the film and/or any profits. Unless it falls within an exemption, the offer of interests in film investment schemes must be made as a 'managed investment scheme', which must be registered with ASIC.

There are limited circumstances in which an investment scheme is not required to be disclosed to the ASIC or offered through a managed investment schemes that is approved by the ASIC. The Corporations Law provides for exceptions for a personal offer or small scale offering of an interest in securities and offers made to what are described as 'sophisticated investors'; or to what is defined as a 'professional investor'. The offers and invitations that are excluded from regulation have specific requirements that must be met.

The regulation of investment schemes is a complex topic that is beyond the scope of this information sheet, and filmmakers should seek advice from an appropriately qualified lawyer, accountant or tax adviser.

Crowd funding

Crowdfunding has emerged as a viable source of funding for film and television projects. Crowdfunding is using the Internet to facilitate the pooling of small contributions of money by a network of individuals in order to finance particular activities or projects.

Arts Law's information sheet, Crowdfunding, discusses legal issues that are created by the use of fan fund/crowdfunding websites to access an international pool of potential supporters of the project.

Although the Australian Securities and Investment Commission has said "crowdfunding, as a discrete activity, is not prohibited in Australia, nor is it generally regulated by ASIC" it is clear that some types of crowdfunding could involve offering a financial product, fundraising through securities, or a managed investment scheme all of which are regulated by ASIC and non-compliance can involve substantial penalties (up to two years imprisonment for operating a managed investment scheme

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without a licence). It is possible to have a crowdfunding rewards program that complies with the Corporations Act. Thus, a promise to deliver a specific product or service as the reward is outside the regulatory scope of the Corporations Act; for example, including having a character named after the contributor or the contributor appearing as an extra in the film, receiving a copy of the finished film, or invitations to the film's first screening. That is, the offering of shares, or direct financial rewards or profit sharing will be viewed as an 'investment' that is regulated by the Corporations Law. The regulation of crowdfunding to secure an 'investment' may change as the Treasurer's 2015 Budget speech stated that "to help small business grow, we are facilitating new opportunities for crowd?source funding, making it easier for small investors to marry up with growing small businesses."

The Australian Securities and Investment Commission (ASIC) has provided guidance as to how donating money to crowdfunded projects is regulated by ASIC under the Corporations Act 2001 (12196MR ASIC guidance on crowdfunding).

Australian filmmakers using crowdfunding need to comply with Australian law, including:

- **Corporations Law**: The Australian Securities and Investment Commission (ASIC) has provided guidance as to how donating money to crowdfunded projects is regulated by ASIC under the Corporations Act 2001 (12-196MR ASIC guidance on crowdfunding).
- **Tax Law**: Australian filmmakers should be aware that any financial contributions they receive through crowdfunding may be subject to income tax as assessable income. This will depend whether their film production activities are considered to be part of a business they are carrying on, as distinct from merely a hobby. To assist you work out if you are operating a business or not, see the Australian Taxation Office website.
- **Australian Consumer Law**: See the Arts Law information sheet.
- **Privacy Law**: see Arts Law's information sheet.

Using crowdfunding necessarily involves posting a short description or treatment of the game project requiring financing. Few crowdfunding sites offer copyright or intellectual property protection so there is always the risk that ideas for games might be copied or exploited by others. For more information on the risks in putting up a teaser video, see Arts Law's information sheet, Putting your film or photo online.

Arts Law recommends that you read the terms and conditions of each crowdfunding website carefully in order to understand which platform is the best to use for your particular project. There are fundamental differences in the services provided by many crowdfunding platforms.

Further information

The Screen Australian website publishes sample paperwork and documents for various aspects of filmmaking.

- Arts Law Centre of Australia, Sample Agreements:
  - Film/Video Sample Agreements Pack
  - Film Loan Agreement
  - Interviewee's Release: Short Form
  - Performer's Release

- Arts Law Centre of Australia, Information Sheets:
  - Business Structures for Filmmakers
  - Classification and censorship

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- Contracts: An Introduction
- Do I need a film location release?
- Employment issues (for NSW employees)
- Film Financing
- Filming in public places
- Filmmaking with a smartphone or hidden camera
- Indigenous Cultural and Intellectual Property (ICIP)
- Liability & Insurance
- New Media: Issues for creators working with and across multiple platforms
- Performers' Rights
- Protecting Your Ideas (the law of confidential information)
- Putting your film or photo online
- Superannuation and contract for services
- Telling people's stories on film
- Using brands and products in film

- Arts Law Centre of Australia, Checklist: Business Partnership
- Catherine Fargher and Seth Richardson, The Arts Insurance Handbook, A Practical Guide for Artists and Art Organisations, 2nd ed, Arts Law Centre of Australia, 2005
- Screen Australia, Info Guide: Information for Filmmakers, Sept 2008
- Screen Australia, I've Got a Great Idea for a Film, April 2012
- Screen Australia, Budgeting Resources
- Screen Australia, Sample Paperwork
- Australian Writers' Guild, Screenwriters Handbook
- Lyndon Sayer-Jones, Media Law for non-lawyers (2nd ed) 2014 (available from the Arts Law Centre of Australia)
- Tom Jeffrey, Film Business – A Handbook for Producers, Allen and Unwin (3rd ed) 2006

Need more help?

If you have questions about any of the topics discussed above please contact Arts Law.

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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