



## media & entertainment insight

march 2008

### AFC announces changes to guidelines to film development funding program

In January 2008 the Australian Film Commission (AFC) announced a series of changes to its Terms of Trade and its Film Development Funding Programs.

In respect of its Terms of Trade, the AFC has announced the following specific changes:

- for projects contracted after 1 January 2008:
- the 10% premium payable upon reassignment of AFC's share of copyright in an AFC developed project has been abolished;
- that share of Screenrights royalties which the AFC currently receives will now be retained by the producer
- for projects green-lit for production by the FFC or Film Australia and contracted for production between 1 January and 31 June 2008, the AFC is now able to rollover its development investment into an equity investment
- the AFC will now invest in short films, short animation films and digital media by way of a grant, so that while the AFC will continue to retain its share of copyright in a production, it will now assign its share of revenue to the producer.

The AFC has taken the opportunity to also announce the other changes to its funding programmes.

#### Practitioner support

On 31 March 2008 Production Cashflow facilities will cease. Those cashflow commitments made in the interim period will be required to demonstrate the ability to repay the loan by 20 June 2008.

The current General Development Investment programme will be replaced by 2 Screen Business Venture programmes. It is believed that guidelines for these new programs will be released in the first quarter of 2008, with several allocation rounds to be conducted before July 2008.

The Marketing Loans and Festival Support programmes have been announced as now being administered by the AFC's Marketing Branch.

#### Feature drama production

Several changes to the AFC's IndiVision programmes have been announced. These include:

- projects are now eligible where 2 out of 3 of the producer, writer, director are provided with a professional development opportunity;

- subject to the assessor's discretion, short-listed applicants may be provided with funding to shoot story material that would constitute part of the materials for consideration of assessors of those projects (although an applicant would also be entitled to reserve the right to refuse the inclusion of funded story material as part of the assessable materials);
- the AFC may now commit up to \$1.25 million into a feature film project;
- the budget threshold for a production to be a "low budget film" has been increased from \$2 million to \$2.5 million.

#### Documentary

- Strand J (Early Development) and Strand K (Development) have been merged into one Documentary Development Strand, with up to \$20,000 available per application (or \$25,000 for a rough/fine cut).

#### Animation

- Strand S (Animation Development) and Strand T2 (funding series or feature development materials) have been merged into one Animation Development Strand, with up to \$10,000 for the development of one-off short animation films, \$15,000 for an interstitial series and up to \$30,000 for feature film or broadcast animation series.

## ACCC to require traders to substantiate advertising claims

In December 2006 the Federal Treasurer announced that the Productivity Commission would undertake an inquiry into Australia's consumer policy framework and its administration (Inquiry).

In response to the Inquiry's Issues Paper, the Australian Competition and Consumer Commission (ACCC) has submitted that changes ought to be considered to the Trade Practices Act 1974 (Cth) (Act) to strengthen its ability to enforce the Act's statutory objective of enhancing competition, consumer protection and fair trading.

### Improved enforcement and redress measures

The ACCC has identified that seeking redress for consumers affected by breaches of the Act by way of representative proceedings can be intimidating and, where commenced, a time consuming and expensive process.

The ACCC proposes that the following changes to the Act be considered:

- an ability for the ACCC to seek pecuniary penalties where traders fail to meet prescribed fair trading standards;
- an ability for the ACCC to use substantiation notices in connection with traders making public claims about their goods or services; and
- an ability for the ACCC to use its compulsory information-gathering powers after a court grants an interlocutory injunction.

### Compelling advertisers to substantiate advertising claims

In particular, a novel element in the ACCC's submission addresses what it considers to be a deficiency in the Act. Currently the ACCC lacks specific

powers to compel advertisers to provide information to substantiate advertising claims.

The ACCC submitted to the Inquiry that the regulations governing its investigatory powers into alleged misleading advertisements have led to inefficiencies, in that it often embarks on investigations without the benefit of adequate information relating to the claims.

It argues that it is unnecessarily costly and time consuming to properly investigate cases which involve misleading representations relating to product safety, environmental, health and nutritional benefits.

"The ACCC believes that the range of powers and remedies available under the Trade Practices Act need to be significantly enhanced in order to ensure the effectiveness and flexibility of the Trade Practices Act to a modern economy," the ACCC said in its submission.

In this regard, the ACCC proposes to seek amendments to the Act in order that it is better armed to issue notices to advertisers alleged to be acting in contravention of the consumer protection provisions of the Act.

A new power to issue so-called "substantiation notices" would, claims the ACCC, provide it with "the ability to require a person to substantiate a claim or representation made" with the consequence that "if a person does not substantiate the claim, the person will be liable for a penalty."

The ACCC provides 2 justifications for it to be granted this new power as follows:

- it will afford the ACCC a mechanism by which it can require a person to provide

information to assist in determining whether a contravention of fair trading or consumer protection laws has occurred.

- such a power will help advance the object of the Act by imposing "a standard of behaviour on traders requiring them to be able to support the truthfulness of claims or representations made to consumers, as the fact of being unable to substantiate in itself may attract a penalty."

The ACCC expects there to be some compliance costs associated with the proposed reforms. As the notices will compel a trader to provide detailed information supporting its advertising claims, there will likely be a burden experienced by traders who know little about their products; however for the more prudent traders who take steps to understand their product, the reforms will likely have little impact in this respect.

The ACCC considers the benefits of such reforms will outweigh this burden. It feels that the power to require advertisers to provide substantiating information will encourage traders to self-regulate and, when claims are brought, assist the ACCC in conducting inquiries more efficiently and with greater focus, which in turn will enable it to investigate a greater number of claims.

In summary, the ACCC has submitted to the Inquiry that "such [substantiation] notices could be used as a quick, efficient way to identify whether an alleged misrepresentation is true or not in the course of an investigation into whether false or misleading representations have been made."

# Screen Australia and the National Film and Sound Archive

Legislation to establish Screen Australia and the National Film and Sound Archive (NFSA) as separate statutory authorities has been passed by both Houses of the Australian Parliament.

Screen Australia is set to begin operations on 1 July this year, after the Screen Australia Bill was ratified by the Australian parliament on 13 March 2008.

A majority of the functions of the Australian Film Commission, the Film Finance Corporation Australia and Film Australia Ltd will be merged into a single statutory agency known as Screen Australia which will act as the key direct funding body for the Australian screen production industry.

Specifically, Screen Australia will perform the following functions:

- supporting and promoting the development of a highly creative, innovative and commercially sustainable Australian screen production industry;
- supporting or engaging in the development, production, promotion and distribution of Australian programs and the provision of access to Australian programs and other programs; and
- supporting and promoting the development of screen culture in Australia.

Screen Australia will be responsible for the administration of the new production tax offset incentives, including the 40% producer offset, a 15% location offset

and a 12.5% tax offset for the post production sector.

Arts minister Peter Garrett said he hoped the agency would “ensure a strong Australian voice across film, television, documentary and children’s programs” as well as “help restore investor confidence and put the industry on a new growth path.”

Also ratified on 13 March 2008 was the Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Bill 2008. The NFSA will be a separate statutory authority, also beginning operations on 1 July 2008. It will be set up in the same way as other national collecting institutions, with its own governing board and management. The NFSA will have ownership of the national collection of audiovisual and related material and full responsibility for selection, acquisition, preservation and disposal of items in the collection.

The government will also be looking to the new agency to develop a high public profile. It will be expected to develop strong access and outreach programs so that as many Australians as possible can enjoy films and recordings in the national collection and can develop a greater appreciation and awareness of the nation’s finest films, television programs, music and spoken voice recordings. It is expected that the authority will have a strong research focus and collaborate with institutions in Australia and overseas.

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